

MT LEGISLATIVE HISTORY

Chapter 379 1987

Bill (H) 566 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) FEB 12 ☒ C

Hearing Date(s) MAR 16 ☒ C

FEB 21 ☒ C

MAR 17 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out FEB 21 ☒ C

MAR 17 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

2/21	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/24	2ND READING PASSED AS AMENDED	96	0
2/24	3RD READING PASSED	99	0

	TRANSMITTED TO SENATE		
3/02	REFERRED TO JUDICIARY		
3/26	HEARING		
3/26	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	50	0
3/30	3RD READING CONCURRED	50	0

	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	85	0
4/09	3RD READING AMENDMENTS CONCURRED	95	0
4/14	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		

4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 543	EFFECTIVE DATE:	4/20/87

HB 565 INTRODUCED BY PISTORIA, ET AL.
NONEXEMPT STATUS FOR PRIVATE VEHICLES OPERATED FOR
PROFIT AND USED BY SCHOOL

2/02	INTRODUCED		
2/02	REFERRED TO TAXATION		
2/03	FISCAL NOTE REQUESTED		
2/06	FISCAL NOTE RECEIVED		
2/10	HEARING		
2/11	HEARING		
2/16	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/18	2ND READING NOT PASSED	60	35
2/19	RECONSIDERED ACTION ON 2ND READING	54	38
2/20	2ND READING PASSED	48	44
2/21	3RD READING PASSED	54	40

	TRANSMITTED TO SENATE		
2/23	REFERRED TO TAXATION		
3/21	HEARING		
3/25	ADVERSE COMMITTEE REPORT ADOPTED	45	3
3/26	RETURNED TO HOUSE NOT CONCURRED		

HB 566 INTRODUCED BY KEENAN, ET AL.
CHILD OR SPOUSE ABUSE TO PRECLUDE JOINT CUSTODY

2/02	INTRODUCED		
2/02	REFERRED TO JUDICIARY		
2/12	HEARING		
2/21	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	97	0
2/24	3RD READING PASSED	99	0

	TRANSMITTED TO SENATE		
3/02	REFERRED TO JUDICIARY		
3/16	HEARING		
3/18	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/21	2ND READING CONCURRED	41	0
3/24	3RD READING CONCURRED	49	0

	RETURNED TO HOUSE WITH AMENDMENTS		
3/26	2ND READING AMENDMENTS CONCURRED	96	2
3/27	3RD READING AMENDMENTS CONCURRED	91	1

HOUSE FINAL STATUS

4/01 SIGNED BY SPEAKER
 4/02 SIGNED BY PRESIDENT

 4/02 TRANSMITTED TO GOVERNOR
 4/07 SIGNED BY GOVERNOR
 CHAPTER NUMBER 379 EFFECTIVE DATE: 10/01/87

HB 567 INTRODUCED BY RAMIREZ, ET AL.
 REDUCTION OF TORT AWARD BY AMOUNT OF COLLATERAL
 SOURCE PAYMENTS

2/02 INTRODUCED
 2/02 REFERRED TO JUDICIARY
 2/11 HEARING
 2/20 FISCAL NOTE REQUESTED
 2/20 FISCAL NOTE RECEIVED
 2/23 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/24 2ND READING PASSED 92 6
 2/24 3RD READING PASSED 94 6

TRANSMITTED TO SENATE
 3/02 REFERRED TO JUDICIARY
 3/25 HEARING
 3/28 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/30 2ND READING CONCURRED 50 0
 3/30 3RD READING CONCURRED 50 0

RETURNED TO HOUSE WITH AMENDMENTS
 4/08 2ND READING AMENDMENTS NOT CONCURRED 71 14
 4/08 FREE CONFERENCE COMMITTEE APPOINTED
 4/16 FREE CONFERENCE COMMITTEE REPORT
 4/20 2ND READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 90 8
 4/21 3RD READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 90 9

SENATE
 4/09 FREE CONFERENCE COMMITTEE APPOINTED
 4/16 FREE CONFERENCE COMMITTEE REPORT
 4/17 2ND READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 50 0
 4/20 3RD READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 50 0

4/22 SIGNED BY SPEAKER
 4/23 SIGNED BY PRESIDENT

4/23 TRANSMITTED TO GOVERNOR
 4/27 SIGNED BY GOVERNOR
 CHAPTER NUMBER 628 EFFECTIVE DATE: 10/01/87

HB 568 INTRODUCED BY FRITZ
 RESTRICT ENTRY OF WILD BUFFALO FROM YELLOWSTONE PARK

2/02 INTRODUCED
 2/02 REFERRED TO FISH & GAME
 2/17 HEARING
 2/19 COMMITTEE REPORT--BILL PASSED AS AMENDED 80 12
 2/21 2ND READING PASSED 87 12
 2/23 3RD READING PASSED

TRANSMITTED TO SENATE
 3/02 REFERRED TO FISH & GAME
 3/17 HEARING

HOUSE BILL NO. 566

INTRODUCED BY KEENAN, MILES, MENAHAN, BULGER,
DARKO, RANEY, NISBET, CODY, SCHYE, LORY,
REGAN, ECK, JACOBSON, VAN VALKENBURG, B. BROWN

IN THE HOUSE

FEBRUARY 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 21, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1987 PRINTING REPORT.

FEBRUARY 24, 1987 SECOND READING, DO PASS.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 99; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 18, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 21, 1987 SECOND READING, CONCURRED IN.

MARCH 24, 1987 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 26, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 27, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 566
2 INTRODUCED BY Keenan Miles Morrison Bulger
3 Clarko R. R. Nisbet Cady Lohr Logg R. C. L.
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT AN
5 Van Valkenburg Bob Brown AWARD OF JOINT CUSTODY IN A SEPARATION OR DISSOLUTION OF franks
6 MARRIAGE PROCEEDING IS NOT IN THE BEST INTEREST OF THE CHILD
7 IF THERE IS A FINDING BY THE COURT OF SPOUSE ABUSE OR CHILD
8 ABUSE BY ONE OF THE PARENTS; AND AMENDING SECTIONS 40-4-212
9 AND 40-4-224, MCA."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 40-4-212, MCA, is amended to read:
13 "40-4-212. Best interest of child. The court shall
14 determine custody in accordance with the best interest of
15 the child. The court shall consider all relevant factors
16 including:
17 (1) the wishes of the child's parent or parents as to
18 his custody;
19 (2) the wishes of the child as to his custodian;
20 (3) the interaction and interrelationship of the child
21 with his parent or parents, his siblings, and any other
22 person who may significantly affect the child's best
23 interest;
24 (4) the child's adjustment to his home, school, and
25 community; and

1 (5) the mental and physical health of all individuals
2 involved; and
3 (6) physical abuse or threat of physical abuse by one
4 parent against the other parent or the child."
5 Section 2. Section 40-4-224, MCA, is amended to read:
6 "40-4-224. Joint custody -- modification --
7 consultation with professionals. (1) Upon application of
8 either parent or both parents for joint custody, the court
9 shall presume joint custody is in the best interests
10 interest of a minor child unless the court finds, under the
11 factors set forth in 40-4-212, that joint custody is not in
12 the best interests interest of the minor child. If the court
13 declines to enter an order awarding joint custody, the court
14 shall state in its decision the reasons for denial of an
15 award of joint custody. Objection to joint custody by a
16 parent seeking sole custody is not a sufficient basis for a
17 finding that joint custody is not in the best interests
18 interest of a child, nor is a finding that the parents are
19 hostile to each other. A finding that one parent physically
20 abused or threatened to physically abuse the other parent or
21 the child is a sufficient basis for finding that joint
22 custody is not in the best interest of the child.
23 (2) For the purposes of this section, "joint custody"
24 means an order awarding custody of the minor child to both
25 parents and providing that the physical custody and

1 residency of the child shall be allotted between the parents
2 in such a way as to assure the child frequent and continuing
3 contact with both parents. The allotment of time between
4 parties shall be as equal as possible; however, each case
5 shall be determined according to its own practicalities with
6 the best ~~interests~~ interest of the child as the primary
7 consideration.

8 (3) Any order for joint custody may be modified
9 pursuant to 40-4-219 to terminate the joint custody.

10 (4) The court may, at any time, direct the parties to
11 consult with appropriate professionals for the purpose of
12 assisting the parties to formulate a plan for implementation
13 of the custody order or to resolve any controversy that has
14 arisen in the implementation of a plan for custody."

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NO CONCUR IN AS AMEND DATE
495	2/11/87	2/14/87	tabled								
501	2/13/87	2/14/87			2/14/87	2/14/87					
502	2/16/87	2/17/87	2/18/87	tabled							
503		2/9/87	2/17/87	2/17/87							
509		2/16/87	2/16/87			2/16/87					
514		2/10/87	2/20/87	tabled							
522		2/9/87	2/23/87	tabled							
546		2/16/87	2/20/87			2/20/87					
548		2/16/87	2/23/87	tabled							
554		2/10/87	2/10/87	2/10/87							
558		2/13/87	2/16/87			2/16/87					
564		2/11/87	2/20/87			2/20/87					
566		2/12/87	2/21/87			2/21/87					
567		2/11/87				2/23/87					

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 12, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 12, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 241:

Rep. Mercer moved that HB 241, DO PASS. Rep. Mercer moved the amendments of the subcommittee. He stated that the first thing that the amendments do is clean up the destructive discharge language. In subsection (5) a new definition for fringe benefits was included. The definition of good cause has been expanded in subsection (6) and an additional condition has been added in a wrongful discharge. Chairman Lory questioned page 3 with regard to a wrongful discharge penalty. Rep. Mercer explained that if the employer has to pay three years wages he will not discharge anyone. He stated that the amendment goes back to the historical wording. Rep. Addy pointed out that litigation of damages concept has been in the law for a long time so it is not a new concept. Rep. Daily asked Rep. Addy if that is the maximum that anyone could receive under this bill but if there is a written employment contract or collective bargaining, this bill would not apply. The maximum damages someone can get is three years lost wages less whatever mitigation costs there are. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Rapp-Svrcek moved to amend section 5, on page 3, subsection (2), striking the words "emotional distress". Rep. Hannah disagreed with the amendment. Rep. Mercer stated that the issue of emotional distress was discussed very thoroughly by the subcommittee and if emotional distress is put into the bill there is not much reason for the bill and he opposed the amendment. Rep. Rapp-Svrcek pointed out that an employee has a right to a rightful discharge and by pulling this language out of the bill, it leaves in place a number of new protections for the employer. Question was called and a voice vote was taken. The motion FAILED 6-12. Rep. Daily moved an amendment in section 5, inserting "an amount not to exceed \$250,000.00". He pointed out that the main reason for this bill is liability insurance and if insurance companies know that that is

STEVE BROWN, Chairman of the State Bar's Committee on Compensation and Selection, stated that if the State of Montana continues to keep judicial salaries at the current low level we will not be able to address this problem. He urged support for this legislation.

There were no further proponents, and no opponents.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 256:

Rep. ADDY made a statement to Mr. Melby in regards to this bill asking for a raise in judges salaries when we cannot afford the University System, welfare payments or public education, freezing state employees' pay and many other issues. How can we raise the judges' salaries when they are already the highest paid in Montana. Mr. Melby stated that since 1977, judicial salaries have increased by 40% in this state but the consumer price index has increased 80%. He pointed out that there is a crisis in the judiciary at this time and if Montana pays more in salaries we will receive better judiciary.

Rep. Cobb asked Mr. Melby if the legislators were paid more, would that make us better legislators. He answered that the Legislative Council has done studies and it is true that the more you pay legislators the more qualified a legislator can be elected because they will be able to take more time away from their businesses, ranches or careers.

Rep. Lory closed the hearing on HB 468.

HOUSE BILL NO. 566, Rep. Keenan, District No. 66, submitted a letter from MAGGIE MOFFATT, Fergus County, Department of Public Welfare, Lewistown, (Exhibit A). Rep. Keenan stated that this bill does one simple thing and that is it adds new language. This is a piece of legislation that is for children because HB 566 states that if there has been abuse it is not in the best interest of the child to be in a joint custody situation. Many people believe that a divorce will end battering so joint custody will work, she said. In reality it may heighten that violence. She further stated that where there is a history of co-parenting during marriage then it works after divorce but joint custody does not force people to be more responsible after a divorce.

PROPOSERS:

CARYL WICKES BORCHERS, Executive Director, Great Falls Mercy Home, Member of the Montana Coalition Against Domestic Violence, stated that the 1985 Legislature made domestic abuse a criminal act in the state of Montana. She hopes that the 1987 Legislature will follow up with the judges and

courts to say that if there is evidence of abuse to either spouse or child, that under the best interest of the child standard, it prohibits the presumption of joint custody. She submitted written testimony. (Exhibit B). She also submitted as (Exhibit C) a handout titled, Joint Custody is not in the best interest of a child in abuse situations.

ANNA MARIE KELLY, Lewistown, supports this legislation. She submitted written testimony. (Exhibit D).

CONCERNED MOTHER, submitted written testimony supporting HB 566. (See Exhibit E).

BARBARA ARCHER, Women's Lobbyist Fund, submitted testimony for ANN G. EIFERT, Dillon, (Exhibit F). She stated that children should not be left in an environment that is detrimental to them and even in the case of spouse abuse, the incidents can leave some very serious and long lasting scars.

LENORE TALIAFERRO, Friendship Center, Helena, stated that she supports the proposed amendments. She further stated that she is strongly opposed to joint custody in domestic violent spouse abuse cases. Written testimony was submitted. (Exhibit G).

MARY FLORENCE ROOT EVING, submitted a proposed amendment to HB 566. (Exhibit H).

TOM SCHNEIDER, Helena, stated that he strongly supports this legislation and presented written testimony. (Exhibit I).

PAMELA SHONE, Women's Law Caucus, presented written testimony. (Exhibit J).

DAN SHEY, Lawyer, Helena, stated that he favors the amendment proposed and urged support for this legislation.

BRUCE BARROTT, Attorney, urged a do pass on this bill.

PATRICIA GARAY, submitted written testimony in support of HB 566. (Exhibit K).

OPPONENTS:

DOUGLAS GROB, Member of the Governor's Child Support Enforcement Advisory Council, stated that some of these issues that have been brought up are covered in section 3. He questioned the bill with regards to what will protect the children from spouse abuse because there is no level or threshold on a finding. Leaving children with one parent or another parent is not necessarily the answer.

(1)

DOC DUTTON, Billings, stated that he opposes this bill because joint custody is necessary for the children. We are concerned for the children and their rights should be recognized.

GLEN R. KAMRET, Billings, stated that he would like to see the bill amended with stronger language because he has a problem with the vague use of the word "threatening". He requested that this bill be killed especially where the children are losing their rights.

RICK JENNISON, Ronan, pointed out that he does not have joint custody of his children, and they are being abused because they are being denied visitation with their father. He stated this seems to favor the mother of the children.

JERRY O'NEIL, Kalispell, opposed this legislation. He stated that people do not need help like this bill to get joint custody out, people need help to get joint custody to be recognized in the court systems more. The present joint custody law needs more time to work.

BOB SILVERNALE, United Fathers of America, Missoula, stated that the way this bill stands is fairly well written. He does not feel that taking children away from parents will solve problems.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 566.

Rep. Miles asked Ms. Shore why we need this bill with regard to clarifying the legal presumption. She stated that currently there are judicial decisions that hold for joint custody when there is documented evidence of abuse. It takes just one parent to apply for joint custody and the courts presume that is in the best interest of the child. Rep. Addy asked Rep. Keenan why is this bill limited to physical abuse only. She stated that she would not mind if this was amended to emotional abuse as well as physical abuse. There must be a court finding that proves that there is a threat and there is physical violence. Rep. Mercer stated that currently the judge can consider threats, but what this bill is saying, is that a threat in and of it self is a sufficient basis to deny joint custody and there are serious threats and non serious threats. Rep. Keenan pointed out that the language in this bill states "that the courts shall consider" and it is saying that a finding by the court is reason for disallowing joint custody.

Rep. Keenan closed the hearing on HB 566 by stating that the opponents of the bill can almost be taken as proponents of the bill because this is a bill that does not speak to gender and they do want joint custody. The court shall find

if joint custody is in the best interest of the child. She stated that she does not have a problem with the proposed amendment.

HOUSE BILL NO. 89, Rep. Winslow, District No. 89, stated that this bill grants immunity for personal injury and property damage to certain private, sports-oriented, non-profit corporations or organizations and to their uncompensated officers and workers. Presently there is a real fear where people are saying that they would like to help out but they do not want to be responsible if someone gets hurt. This points to a need for immunity for personal injury and property damage.

PROPOSERS:

JERRY SEPICH, Great Falls, urged support for this bill. He proposed an amendment that states, that immunity be granted to coaches and referees that have gone through some kind of training, specifically dealing with safety. He further stated that Bruce Moerer, of the Montana School Board is in support of HB 89.

KARL ENGLAND, Montana Trial Lawyers Association, stated that section 1(b) relates to uncompensated workers, directors and officers and that falls in line with the testimony given in the Senate on SB 49 and the Association supports the idea. He suggested the HB 146 procedures should be incorporated into this bill. He is not in support of the section relating to the liability of the corporation. He favors a regular negligent standard.

There were no further proponents and no opponents.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 89:

Rep. Daily asked Mr. Sepich about his proposed amendment stating that he supports the bill, but the training requirement would make it even harder to get coaches on a voluntary basis. He stated that the program he proposes is a video taped program and it takes only four hours to complete. He felt that the coaches would want to get involved because they would have the extra training.

Rep. Lory asked Mr. Sepich what was the charge for the training and he stated that it is \$15.00 for the National Sports Coaches Association and he thinks it is approximately \$25.00 for the American Effectiveness Training.

Rep. Winslow closed the hearing on HB 89 by stating that he hopes the Legislature will deal with this issue and as to the intent of the amendment he feels it is very important

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 12, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

FERGUS COUNTY DEPARTMENT OF PUBLIC WELFARE

308 Bank Electric Building
Lewistown, Montana 59457
(406) 538-7468



February 11, 1987

A
2-12-87
566

Dear Legislators:

I am writing out of concern on the issue of joint custody and the bill 566. I feel strongly that you need to consider alternatives to joint custody in cases where abuse is present. Custody issues should be granted with the child's or children's best interest in mind.

I am a social worker presently working in Child Protective Services and worked formerly as co-ordinator of a Spouse Abuse program. In most of our cases, the children were used as tools to hurt the other parent. In cases where spouse abuse was present, joint custody forced the abused parent into seeing the abusive parent when visitation with the children would take place. National statistics show 75% of spouse abuse occurs after divorce.

I believe it is also important to understand the effect on children when they see one parent abusing the other, and in essence, that is abusive in itself. Children have become a part of the vicious cycle of abuse. 95% of the abusers, (be it spouse abuse or child abuse) were either victims of abuse themselves or saw violence happen in their homes. Therefore, we know that violence is a learned behavior. A child who is a victim of abuse by a parent should not be forced into an unprotected visitation.

I think as adults, we owe it to our children to protect them, both physically and emotionally. It is time for us to set some legislation to help with this protection.

Sincerely,

Maggie Moffatt
Social Worker II

MM:lz



February 6, 1987

EXHIBIT B
DATE 2-18-87
HB # 566

Capitol Station
Helena, Montana 59601-

Dear Legislators,

I am here today to ask your Support for HOUSE BILL 566 (CHILD ABUSE OR SPOUSE ABUSE TO PRECLUDE JOINT CUSTODY), as a member of the MONTANA COALITION AGAINST DOMESTIC VIOLENCE.

I have worked with over 5,000 Battered Women and Children since I started the 1st Shelter in Montana in May/1977 (one of 30 Shelters in the United States addressing the Problem of Spouse Abuse at that time).

In 1986, The Mercy Home Staff and I worked with 538 Women and Children 'in' the Shelter and an additional 1,381 Family Units in Outreach. Due to our EDUCATIONAL efforts we are doing much more Prevention Work. We use an in-depth 4 Page 'Confidential Intake' form to get the Case Histories of the Types of Abuse/Family Backgrounds/Types of Parenting Skills & Nurturing each Spouse Uses/ and the affects on the Children. We also have the Women write Journals--documenting the History of the Abuse to her/ Abuse to the Children/ or what the Children witnessed or heard. They also document how the Children are learning this 'ROLE-MODELED BEHAVIOUR' as NORMAL BEHAVIOUR.

I have testified in 8 different District Courts (as an EXPERT WITNESS) on the Dynamics of Abuse; Cycle Theory; Learned Helplessness; Intergenerational Cycle of Family Violence; & Affects on the Children. I have also ADVOCATED with many other VICTIMS and have witnessed how the ABUSIVE PARENT will try to Regain CONTROL over the other Spouse by using the Child or Children as "PAWNS" to get his Spouse back in the Relationship. Some of the Next Personal Testimony here today will exemplify this Dynamic of using the Children as 'PAWNS'.

JOINT CUSTODY does not force AN ABUSIVE PARENT to become a 'Responsible Parent' (just as there exists no means of forcing a Parent to exercise their right of visitation under a sole custody order).

COURT IMPOSED JOINT CUSTODY increases the Rights but not the Responsibilities of the Parent who does not Primarily Care for the Child. Further, it endangers Battered Women by decreasing their ability to Protect themselves and their Children from further Violence, and endangers all of them by aggravating their already-strained Economic Circumstances due to the Abusive Relationship.

COURT IMPOSED JOINT CUSTODY gives the ABUSIVE PARENT a guaranteed continuing and frequent access to his Victim, while the Battered Woman lives under the ever-present Threat of Losing Custody altogether if she appears to "OPPOSE" or "INTERFERE" with the Batterer's Role.

The 1985 LEGISLATURE made DOMESTIC ABUSE A CRIMINAL ACT in the STATE OF MONTANA. I hope that the 1987 LEGISLATURE will follow up with the JUDGES & COURTS to say that if there is: 'Evidence of Abuse to either Spouse or Child-- that under the 'BEST INTEREST OF THE CHILD STANDARD'--it prohibits the Presumption of Joint Custody.

Sincerely yours,

Caryl Wickes Borchers
Caryl Wickes Borchers

Executive Director, Great Falls Mercy Home
Chair, Montana State Task Force on Spouse Abuse (1978-1982)
Rep., Montana Coalition Against Domestic Violence (1982-87)

EXHIBIT 16

C
DATE 2-13-87
HB # 566

JOINT CUSTODY IS NOT IN THE BEST INTEREST OF THE CHILD IN ABUSE SITUATIONS

CONTINUING THE CHILD'S EXPOSURE TO ANTI-SOCIAL AND AMORAL BEHAVIOR IS AGAINST THE STATE'S INTEREST

CHILDREN ARE FREQUENT WITNESS TO THE ABUSIVE BEHAVIOR

ABUSIVE BEHAVIOR IS LEARNED BEHAVIOR

PRESUMPTION FOR JOINT CUSTODY LIMITS REASONED CHOICE AT THE TRIAL COURT LEVEL

LACK OF IMPULSE CONTROL AND LOW SELF ESTEEM ARE HALLMARKS OF ABUSIVE PEOPLE

DRUG OR ALCOHOL ABUSE IS FREQUENTLY PART OF AN ABUSIVE PATTERN

JOINT CUSTODY IS USED AS A BARGAINING CHIP BY ABUSIVE PARENTS TO GAIN CONCESSIONS FROM THE SPOUSE IN BOTH PROPERTY AND CUSTODY NEGOCIATIONS

THE PRESUMPTION IS IN CONFLICT WITH THE STATE'S INTEREST IN ENDING DOMESTIC ABUSE

JOINT CUSTODY EXPOSES THE ABUSED PERSON TO CONTINUING ABUSE

PIECEMEAL LITIGATION IS AN INEFFICITIVE WAY TO ELIMINATE THE PRESUMPTION OF JOINT CUSTODY IN ABUSE SITUATIONS

12

JOINT CUSTODY IS NOT IN THE BEST INTEREST OF CHILD IN ABUSE SITUATIONS

HB

566

There is an inherent conflict in the presumption that joint custody is in the best interest of the child when there is abuse in the family. The presumption of joint custody, subordinates several other interests. The subordinated interests are: the interest of the state to minimize domestic abuse; the interest of one parent to be free from coercion of the other; and the best interests of the child.

Parties are free to use whatever leverage is available to obtain a favorable settlement. This results in the use of custody as a bargaining chip. It is against the State's interest to give this bargaining power to an abusive person. The results of a 10 year study of the effects of California's no-fault divorce law, indicate, that fewer than one man in 10 sought physical custody of the children, but one third used custody threats to gain leverage in financial bargaining. L. Weitzman, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA (1985).

Data that is available indicates that mature and committed parents who voluntarily choose joint custody often find it rewarding. It is possible for children to live in two homes and remain positively attached to two parents who no longer love or want to be married to one other. Steinman, JOINT CUSTODY: WHAT WE KNOW, WHAT WE HAVE YET TO LEARN, AND THE JUDICIAL AND LEGISLATIVE IMPLICATIONS, 16 U. C. D. L. Rev. 739, 743 (1984). These conclusions are a product of empirical studies of the parenting experiences of couples who were committed to the idea of joint custody and struggled scrupulously to make it work. There is no data on how successful involuntary arrangements are. Steinman noted in a survey of the data surrounding joint custody that "We have no data on the outcome of joint custody for families in which parents come to joint custody (at least initially) involuntarily or as a result of pressure from the legal system." Id. at 749.

Among committed parents, joint custody appears to be an attractive custodial alternative. However, care should be taken as even with cooperative parents, there is a need to ensure that joint custody suits the child's best interests. There is no evidence that joint custody would be successful between uncooperative parents. In a study reporting current findings, the researchers found, ".... the level of interparental conflict may be more central to the child's post-divorce adjustment than father absence and the disruption occasioned by marital dissolution per se." Derdeyn and Scott, JOINT CUSTODY: A CRITICAL ANALYSIS AND APPRAISAL, AMERICAN JOURNAL OF ORTHOPSYCHIATRY (1984). It is impossible to conclude the presumption of joint custody is for the child's best interest.

Several studies have examined whether abusive role modeling by a parent impacts the children. Their conclusions are a resounding yes. A study conducted in 1978-1980 of 306 mothers with 735 children concluded: 76% said children were present at beatings; children are both recipients and observers of violence; and 33% said children were beaten (one-half separately, and one-half in connection with mother). Pagelow, CHILDREN IN VIOLENT FAMILIES: DIRECT AND INDIRECT VICTIMS, "YOUNG CHILDREN AND THEIR FAMILIES, (1982). Abusive spouses lack moral judgment and impulse control. These are indications of a violent personality that may interfere

DATE 2-12-87 # 56

with a good parent-child relationship. In a British survey 54 percent of the husbands of the battered women ~~questioned~~ had committed acts of violence against the children as well. Gaylord, WIFE BATTERING: A PRELIMINARY STUDY OF 100 CASES British Medical Journal 194 (1975).

Case law in a number of states recognizes battery in the home of the parent seeding custody is a bar to custody. Custody was denied to a father who beat the mother. Williams v. Williams, 104 Ill. App. 3d 16, 432 N.E.2d 375 (1982). Indiana court refused to exercise its UCCJA jurisdiction as there was a pending custody proceeding in a more convenient forum, where the mother had fled from alleged act of abuse of mother by father. Cline v. Cline, 433 N.E.2d 51 (1982). In Montana two mothers were denied custody as the men they now associate with have either reputations of, or have acted out violence. Schiele v. Sager, 571 P.2d 1142 (Mont. 1977) and Bier v. Sherrard, 623 P.2d 550 (Mont. 1981).

Seven states have enacted laws that recognize abuse to a spouse is harmful to the child. They cover a wide spectrum. Arizona requires the courts to consider evidence of spouse abuse as being contrary to the best interests of the child. Arizona House Bill 2430, signed May 9, 1986. See also, Florida Statute section 61.13(2)(b)(2), Illinois Revised Statute (1979) chapter 40 paragraph 602(a)(6). Alaska requires the courts to consider whether there was violence between the parents when deciding whether or not to award joint custody. Alaska Statutes section 25.20.090(8). See also California Civil Code section 4601.5. Kentucky allows spouse abuse as a defense to abandonment of a child if parent left home because of the spouse abuse. Kentucky Revised Statutes Annotated section 403.270(2). See also Colorado Revised Statutes section 14-19-124(4).

There are no studies that conclude joint custody is always in the best interests of the child. There are studies to show the stress of joint custody is detrimental to approximately one third of the children involved. Is it sound policy to base custody awards on creating equality between parents? Or on achieving and maintaining stability for the child. From the child's point of view, the displacement secondary to joint custody may be too stressful. The conflict created by disagreeing parents is not avoided by Montana's current mandate. The child must live with the prolonged conflict and bear the stress to meet the parent's needs. As the Montana statute does not allow a judge to screen out those disagreeing parents who can not put aside their differences for the best interest of the child.

Currently the presumption of joint custody may be overcome by application of MCA 40-4-212. This is the Best Interest of Child Statute that provides several possible challenges to the presumption. However none of them is a direct statement that perpetuation of abusive behavior is against the best interests of the child. This leaves a judge free to disregard abusive behavior in custody awards. All too frequently intra-spousal abuse is not construed as impacting ability to parent. Abuse between husband and wife are not seen as harmful to the children. Though in other areas of law such behavior is a criminal offense. This legislature should address this contradiction.

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EXHIBIT D
DATE 2-13-87
HB # 566

January 23, 1987

Dear Legislature,

I am writing this letter to you in support of Bill # HB 566. I have a very strong and personal interest in this bill. Last May I left an abusive marriage, after three long years.

In the first violent fight we had, it ended by my ex-husband pushing me through our storm door. I was so shocked and he was so sorry afterwards, promising that he would never again treat me that way.

In a following incident he lost control and threw me into the waterbed hard enough that I knocked the frame off of the base. Again he begged me to forgive him and trust him that he would never hurt me like that in the future.

Once when I was just getting out of the shower, he exploded, we fought, then he carried me, without any clothes on, down into our unheated basement and locked me down there. The door was in the floor and he pulled the kitchen table over it. When I wouldn't stop screaming, he came back down to "shut me up." He threw me around until he finally pushed me through the wall. Later, I found out that at the time I was almost a month pregnant with our first child, Patrick.

During this same pregnancy when I was six months along he threw me into the coffee table. I ended up on the floor. I began feeling cramps and thought I was going to lose the baby. I became very upset and started to cry. He came over to me and

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sat on my stomach and began slapping me and calling me names so that I would stop crying. He finally stopped slapping me when I quit crying.

There were times that he would twist my arms around and tell me that he could break them if he wanted to.

Once when I was pregnant with our little girl, Amanda, he locked me out of our house. It was the middle of February. I walked two miles to my parents home. Then returned to get Patrick. I left him for awhile after that. I stayed with my parents and he would come and pick up Patrick to visit him. When I would ask what time to expect them back he would tell me that he'd bring him back whenever he was good and ready and he told me once that maybe he wouldn't bring him back at all. He did return Patrick, but I always worried that he would carry out his threat, because if he threatened to do something he usually did it.

I returned to the marriage thinking that our children needed a father. But the violence still continued. One night I brought Amanda, who was two months old at the time, to bed with us to nurse her. He didn't want us in his bed so he tried to throw me out of the bed. In the process of getting at me he hit Amanda instead.

Then in October of 1985, he tried to suffocate me, he even told me that "this might as well be your death-bed bitch." I think the only thing that stopped him was Amanda's crying. Later when reminded of this incident he would say that if he had really tried to kill me, I would be dead.

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The last fight we had was the Friday before Mother's Day in 1986. We fought and he tried to physically throw me out of the house. I grabbed onto everything on my way out, he couldn't get me to let go of the doorway, so he laid my legs across the slushy snow on the top step.

When I got back into the house he told me that he was going to call the police on me because I was a "crazy person." I handed him the phone and told him to go ahead. But when he didn't use the phone, I did, to call my parents and I asked them to come get the children (who had been watching the entire time) and myself.

While I was waiting for them to arrive he twisted my body like a pretzel, taking my leg up over my neck and held me there. I still have a scar on my back from it scraping on something when he was holding me in that position.

When my family arrived and I went to leave, he told me that I couldn't take Patrick and Amanda with me. I knew that he would be leaving later that day and could come back then and get the children, which is what I did.

I have only told of some of our violent episodes, after I left our marriage a counselor and I figured out that we had some fifty outbursts of violence in the three years we spent together.

The day I left my husband I contacted S.A.V.E.S. (Spouse Abuse Vital Emergency Services) from my parents home. I knew that I could no longer live the way I had been living and that it was no way to raise my children. I didn't want them to think

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that was a normal family life.

So I decided, with the help of the S.A.V.E.S. advocate, to press charges against my husband for the way he had treated me, after all, it is against the law for one human being to treat another human being the way that he had been treating me. I was really scared of what he would do to me after I filed the charges against him but I went ahead and did it.

I spent that weekend (Mother's Day) at the Mercy Home in Great Falls, for the safety of myself, Patrick, Amanda and my familys. On Monday, May 11, he plead not guilty to the charges of domestic abuse that had been filed against him. Right then I knew that this man was going to deny his problem of being someone who takes out his frustrations physically on someone else. I also knew that for my safety and the safety of my children I could not go back to living with this man.

On Wednesday, May 14, 1986 I filed for a Temporary Restraining Order against him and I also filed for a divorce. The restraining order was then made permanent at a hearing on the 29th of May.

Then on June 11, 1986 he plead guilty to his domestic abuse charge. Not because he himself believed he was guilty, but because his lawyer advised him that if he changed his plea he would receive a lesser sentence, then if it was proven that he was guilty. Up until the day before his sentencing, his lawyer kept asking to to drop the charges. But I believed that since I filed the charges, what sense would it make to drop thim. He received suspended jail time of ten days as his sentence.

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We had our divorce hearing on October 27, 1986, as of today we are still not divorced. At that hearing the judge said that when he ruled, it probably would be for joint custody of the children. He said that the two of us should be able to cooperate and communicate with each other for the sake of the children. Evidently, what he does not seem to understand is that in an abusive situation we don't cooperate or communicate with each other. After living with this man and letting him totally dominate me, he finds it impossible to see me as a person who can have thoughts and opinions of my own. He still has the same attitude towards me as when we were living together, it's his way or else.

I understand what joint custody is and believe that in my particular case and in most abusive marriages, that it is a way for the abusive partner to keep some control over his partner, who actually wants little or absolutley no contact with the abusive ex-spouse.

When I first left my husband and was talking to the S.A.V.E.S. advocate, she told me that since I had told her of my husbands abusive behavior to the children and myself, iff we went back to live with him, she would have to report it to the Child Protection Services and that I might lose my children because of the violence in our home.

I stayed away from him, but now, even after his being guilty of domestic abuse he has the right to be alone with our children during visitation and if the judge rules for joint custody he could be a very strong influence in their lives.

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Now that we are seperated, he still verbally abuses me in conversation. Whenever I speak to him on the phone he always makes remarks about me being incapable of being a good mother to our children.

For awhile I would take Patrick and Amanda to his house for visitation, but while I was there he would say cruel things to me in front of the children. So now my parents take them for their visits and now he says smart remarks to them.

We went a couple of times for counseling last summer (to try and make divorce settlement with a third party present.) Still then he couldn't stop making verbally abusive remarks, which even the counselor pointed out how he spoke to me as being in an abusive manner.

A recent Department of Justice report states that half of the abuse recorded happens after the couple has been seperated, and quite often the childrens visitations provide the abuse with the oppurtunity to get his hands on the victim again.

I would greatly appreciate that you consider voting in favor of Bill # HB566

Thank you so much for listening to my personal opinion on this issue.

Sincerely,
Anna Marie Kelly
Anna Marie Kelly

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TO: 1987 Montana State Legislators

RE: House Bill 566

EXHIBIT E
DATE 2-13-87
HB #566

As the law now reads joint custody is preferred in all cases. Truthfully, before I met, and consequently married the father of my child, I too, thought that this was the only way it should be. But in the last 2 years, after having been abused physically, emotionally, financially and socially by this man, I've come to realize that joint custody is not always in the best interest of the child.

My husband had abused me mentally during most of our courtship and all of our marriage. How can you explain to anyone the feelings of degradation that someone who supposedly loves you makes you feel, let alone prove it in a court of law. Those feelings are real, and they hurt just as much as the physical ones that leave bruises. Only you can't see the bruises inside a person.

During my pregnancy his mental abuse became excessive. He constantly threatened me with divorce or annulment, on one occasion he told me how fat I was and that if I didn't quit gaining weight our marriage would definately be over. I was 7 months pregnant and he was telling me I didn't need to gain 20 pounds to have an 8 pound baby. He was constantly downgrading my parents by telling me how bad they were, that they were bad parents because they didn't live in a big beautiful home. My parents had always been very kind to him and I couldn't understand why he hated them so.

During the 6th month of my pregnancy we attended his brothers wedding out of state. The day of the wedding was the first time he had hit me out of anger. He slapped me across the face and pushed me on the bed. He had hit me before, but he always laughed it off as being for fun. One night he hit me so hard on my thigh that I lost all feeling in my leg and I could barely walk for a few days. He laughed and said he had given me a "Dead Leg". He would constantly slug or pinch me on my upper arms so that I always had bruises.

In my 7th month I realized that I couldn't go on like this. At this point, he was seldom home, but when he was he screamed at me continually. He was drinking excessively and because he admitted to me his prior use of cocaine I believe that he was using it again. I was a nervous and emotional wreck, and not only did I fear for my safety but I was afraid for my unborn child. I left him in August of 1985.

EXHIBIT 2

DATE 2-12-87

Even though I left him a full 2 months before our child was born, he still continued to try to control me. He immediately went to a lawyer and had a separation agreement drawn up. When I refused to sign it and told him that I wanted my lawyer to look at it, that I didn't want to share the same attorney, he became violent and wouldn't let me take the agreement to my lawyer. Long before I gave birth to our child he was telling me that I was not a stable mother. I was emotionally and financially unstable - I couldn't take care of myself let alone a child. He wouldn't let me come and get things that I have left at our house, in fact they are still there. Our daughter was born October of 1985.

She was only 6 days old when he served me with divorce papers. He would not help me financially at all. I returned to work four weeks after her birth, I did not have any money. Her father wouldn't even buy diapers for her. I did not receive a dime of support for my daughter until she was 3½ months old, and that came after I filed to get child support. This man did not want our child. He didn't support her at all or buy her anything until he was practically forced by the courts. He refused to have his child insured. There was a time before I filed for child support that he went almost a month without seeing her and went a full 2 weeks without even calling to inquire as to her well-being. Yet this was a man who sat in court and cried buckets because I "would not let him see his beloved little girl and it broke his heart. I showed tendencies that he felt would not be beneficial to the relationship that he wished to develop with his daughter." I believe that he used her only as a pawn to get back at me. He knew how much I loved my daughter and he knew I would do anything for her.

Shortly after her birth I witnessed several incidents that made me constantly worry for her safety while she was with him.

He held her nose to see how long it would take her to figure out how to breathe through her mouth.

When picking her up he would grab her by her wrists and pull her up without supporting her head and neck. I must add that we took a class on how to care for a newborn so he could not plead innocent on this one. One of the things that they stressed was supporting the infant's neck and head properly.

On several occasions I went and picked her up at his home. He had taken her bottle and filled it with Pepsi. The first time she had drunk almost the whole bottle, the 2nd time she only had ½ the bottle. She was at this time a totally breast-fed baby. On both occasions I told him not to give her Pepsi,

EXHIBIT F

DATE 2-12-87

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that the her pediatrician said that such a small infant could not stand to have so much acid in her stomach, mainly because her digestive system was so immature. His response was "What does Pepsi have that your breast milk doesn't?" On both occasions she became very ill, suffering with sever diarrhea and vomiting.

He drank very heavily at times when he had her. On one occasion after having been told to have her home by 9:30 pm he brought her home at 11:30 pm. He was so drunk he could hardly walk , yet he drove with her, placing her car seat on the floor of his truck. There were times when he would come to pick her up and he wouldn't take her bottle or blanket and when I would try to have him take them he would scream at me. During these times it was quite common for him to bring her back without a coat or her hat. She was barely 4 months old and it was below zero many of these times.

Our first hearing before the judge was in January. At this time because of my husband's constant harassment when he picked our daughter up, the judge ordered a third party. Visitation consisted of every other weekend from 8:00 am to 8:00 pm both Saturday and Sunday, with weekday visitation at my discretion. I would let him see her several days during the week because I was told by my attorney that I would look like the cooperative parent that way. Even though we had the third party he still found ways to harass me. He would call me at work and threaten to steal her, he'd send flowers with harassing cards, phone calls in the middle of the night and pizza deliveries. One morning I woke and found that my car was missing. It was found later that day and the police said that whoever took it had access to a key, because there was no visible forced entry. My husband had a key and I believe that he is the one that took it.

On February 18 of last year instead of returning our daughter to the designated third party he left a message telling me to pick her up in Sand Coulee! That particular night it was around -15°, and I had no reliable way to get out there. We had to send the Sheriff's Department to go get her.

After this experience the judge gave him more visitation-Every other weekend plus three nights a week. He also took away the third party.

At this time the harassment and threats became unreal. He threatened to kill me, to steal our daughter, quit his full time job so he wouldn't have to pay child support. She would come home without her coats, shoes, clothers, and bottles. He would pick her up and leave her with girlfriends or neighbors and then go to work or whatever. He would take her to the bars and bowling alleys if he couldn't get someone to watch her and then leave her with the people there.

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During our last court appearance concerning custody the third party was used again. Though it cut down some of the harassment, he still found ways. He followed me constantly, in other peoples vehicles, he'd call and hang up or just let the phone ring and ring at all hours, I had strangers banging on my doors at the oddest hours.

On June 22nd of last year my daughter died at the age of 8 months and 1 week. She died while with him and the cause of her death has been listed as undetermined. I thought that this would be the end, not the beginning of another nightmare.

He used our daughter as a way to get me back to try and control me, while she lived, and even now he still tries. Shortly after her death he unsuccessfully tried to have her body moved by saying that none of his wishes were met during her funeral. We quickly proved that he was lying. Lately he has been using her grave as a place to harass me. I receive great comfort from going to my child's grave. My grandparents are also buried there. And now I believe he has been desecrating her gravesite to hurt me. The first item was a poster saying that I had lied to both him and our daughter. The second was a nude photograph he had taken of me while I was undressing. The last time these items were seen by me they were in his presence.

I realize that most divorce cases do not end as mine did, my story and my daughter's story are extremes. But as extreme as they are, it should never had happened and nother little child should never be make to suffer at the hands of an abusive parent.

A Concerned Mother

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



EXHIBIT F
DATE 2-12-87
#566

Testimony--HB 566, House Judiciary Committee, Feb. 12, 1987, Ann G. Eifert

Dear Women's Lobbyist Fund representative,

I would like to enter my testimony on House Bill 566.

As a mother of children who have been subjected to verbal and mental abuse and some physical abuse I would like to see this bill passed.

I believe that children should not be left in an environment that is detrimental to them and even in the case of spouse abuse, the incidents can leave some very serious and long lasting scars.

We need to consider that many of those who are abusers either of their spouses or their children cause the cycle to be repeated because those who abuse were often abused as children.

My divorce is still in process from an abuser. I have a 9 year old son that I don't want to follow in his father's footsteps. With our courts the way they are today and with joint custody arrangements, I'm not really sure my sole influence can completely counteract the influence from the other side.

I'm sure that many of the other women in my position would also feel quite strongly on this issue, particularly those who have been assisted in the state's domestic abuse programs.

I feel so strongly on this that I would prefer very much to even see my children in foster homes than to have them in very much contact with their father.

Sincerely,
Ann G. Eifert
2200 Lovers Leap
Dillon, Mt. 59725

WITNESS STATEMENT

EXHIBIT GDATE 2-12-87HB # 566BILL NO. 566

DATE _____

NAME Lenore F. TalerferroADDRESS 1026 9th Ave.WHOM DO YOU REPRESENT? Friendship CenterSUPPORT ☒

OPPOSE _____

AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support very strenuously the amendments to joint custody. In domestic violence/spouse abuse cases, joint custody is not appropriate. It is destructive & dangerous for both caretaker parent & children.

EXHIBIT H
DATE 2-13-87
HB #566

PROPOSED AMENDMENTS TO HOUSE BILL 566

1. Title, line 8.

Following: "PARENTS"

Insert: "OR A FINDING OF CHEMICAL DEPENDENCY OR ABUSE BY ONE
OF THE PARENTS"

2. Page 2, line 2.

Strike: "and"

3. Page 2, line 4.

Strike: "."

Insert: "and;"

4. Page 2, following line 4.

Insert: "(7) chemical dependency as defined in 53-24-103
or chemical abuse on the part of either parent."

WITNESS STATEMENT

EXHIBIT I
DATE 2-12-87
HB # 566

NAME Tom Schneider BILL NO. 56
ADDRESS 447 S. Park DATE 2/12/87
WHOM DO YOU REPRESENT? Individual
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*I strongly support HB 566
out of a deep interest in child
and spouse abuse.*

WITNESS STATEMENT

EXHIBIT J
DATE 2-13-87
HB # 566

NAME Pamela Shone BILL NO. 566
ADDRESS 920 Evans Missla, MT DATE _____
WHOM DO YOU REPRESENT? Women's Law Caucus
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The presumption of Joint Custody upon showing of abuse by one parent is against the best interest of any child. It is against the interest of the state in ending Domestic Abuse.

February 8, 1987

EXHIBIT *K*

DATE *2-13-87*

HB *#566*

Dear Legislators,

I am writing in support of Bill 566, Child Abuse or Spouse Abuse to Preclude Joint Custody. Working at a battered women's shelter, I find this bill essential not only to the women I serve, but as society's response to their responsibility to child welfare.

I would like to tell you the story of Dawn. Dawn came to the shelter in April of 1980, her husband (Tom) was extremely abusive and controlling. By 1982 Dawn had gotten a divorce and started a new life for her and her children in Idaho. She had custody, he had summertime visitation. Tom showed up drunk to take his kids to Great Falls for the summer. Dawn had no legal right to stop him. He took the kids and never returned them. Dawn's economic situation did not make it feasible for her to come to Montana until a year later.

While she was in Great Falls, trying to retrieve her children, he had control again. The kids were used as pawns, they were allowed no contact with their mother. Dawn was threatened and harassed, not to mention the psychological effects on the children.

At this time, Tom filed for joint custody. Dawn's fears of losing her kids were immense. She had neither the money nor the time to oppose him in court. By spending an extensive time in Great Falls, she was putting her life in Idaho in jeopardy. After 51 days, Dawn got her children back. They were confused and withdrawn for some time.

This is a story of manipulation. Child care is an issue of competency. Producing children does not presume capability. In a custody case, spouse abuse (need I mention child abuse) is an essential determining element. To summarize- AN ABUSIVE HUSBAND DOES NOT MAKE A SAFE FATHER!

Sincerely,

Patricia Haray 24

VISITORS' REGISTER

COMMITTEE

BILL NO. 566DATE Feb. 12, 1987

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Anna Maria Kelly	Leawestown, MT	X	
Becky Flesch	Leawestown, MT	X	
Tom Schneider	Helena	X	
Pamela Shore	Missoula	X	
Lenore F. Toliaferro	Helena	X	
Barbara Becker	Women's Lobbyist Fund	X	
James O'Neil	Kalispell		X
Lillian Kiehl	"		X
Theresa McCrea	Plains		X
Bob Sutton	Tolson		X
Douglas E. Holt	Kalispell		X
Alan R. Kamrat	Billings		X
Ann E. Eifert	Billon	X	
Mollie Jo Kern	Great Falls	X	
Glenn Brown	Great Falls	X	
Joan Chandra	St. Falls	X	
Kate Chandra	St. Falls	X	
Caryl Wickes Bouches	St. Falls	X	
Bob Silvernale	UNITED FATHERS OF AMERICA - MISSOULA, MT 59807		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 21, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 21, 1987, in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Hannah and Brown who were absent.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 475: Rep. Lory moved to TABLE HB 475 at the request of the sponsor. A voice vote was taken and the motion CARRIED 8-5 with Rep. Strizich, Miles, Darko, Addy and Bulger dissenting.

ACTION ON HOUSE BILL NO. 478: Rep. Gould moved DO PASS. Rep. Cobb moved the amendments proposed by the subcommittee. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments attached).

Rep. Mercer questioned the two-thirds vote being taken out but wondered if it still grants immunity. Rep. Cobb stated that the word immunity was still in the bill. Mr. MacMaster pointed out that the two-thirds vote would still need to be in the bill to make the district immune because currently just the employees are immune under the tort claim act. Rep. Cobb moved to put the two-thirds vote back in and strike amendment number six. The motion CARRIED unanimously. (See Amendments attached). Rep. Cobb moved that HB 478 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 146 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 146: Rep. Cobb moved DO PASS. He moved the amendments proposed by the subcommittee. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments attached). Rep. Cobb moved DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 146 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 566: Rep. Mercer moved DO PASS. Rep. Miles suggested that the language be tied together as defined last session as domestic abuse. Rep. Mercer moved to amend by deleting the words, "threatened to physically abuse". Question was called and a voice vote was taken.

The motion CARRIED 10-3 with Reps. Daily, Miles and Rapp-Svrcek dissenting. Rep. Mercer moved to amend the title by adding, "chemical dependency or abuse by one of the parents to the relevant factors the court must consider" and inserting such language on page 2, line 4. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments attached). Rep. Mercer moved DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 566 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 761: Rep. Meyers moved DO PASS. Rep. Mercer stated that this bill will benefit the residents of Montana. Rep. Miles stated that she has problems with the bill in terms of the intent of bail. Rep. Rapp-Svrcek wondered if this bill mostly deals with indigents. Rep. Strizich explained that this bill simply reduces the amount of people in the jails and helps jail staff problems. We do not need to endorse the bail bond business because it is better to get the people home rather than having them sitting in jail. Question was called and a voice vote was taken. The motion CARRIED 13-2, with Reps. Gould and Cobb dissenting. HB 761 DO PASS.

ACTION ON HOUSE BILL NO. 460: Rep. Brown moved DO PASS and moved his amendments. He explained them and opened discussion. Rep. Meyers stated that he is concerned about the hidden taxes. Rep. Brown explained that it is not hidden and it is on only the people who are creating the problems or potentially creates the problem. Rep. Rapp-Svrcek pointed out that the Big Brothers and Sisters organization was satisfied with \$25.00. He stated that \$155.00 is too big a chunk to swallow, so, he suggested that we economize. Rep. Gould agreed with Rep. Brown and stated that when an organization like Big Brothers and Sisters is only getting 23% and is raising 77% on their own, we should give them the help they need. Rep. Mercer stated that the dissolution fee should be adjusted accordingly. Rep. Bulger suggested that the divorce fee be set at \$100.00. Rep. Brown stated the accounting would go like this: \$40.00 will go to the displaced homemakers, \$35.00 to the Big Brothers and Sisters, \$25.00 to the district courts, less \$5.00 for the present child trust fund. Coordination instructions should be included that ties this bill to Rep. Pistoria's increase, plus language that ties it to Title 39, Chapter 7, part 3, for the \$40.00 increase, plus a flat fee and the effective date of July 1, 1991. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments attached). Rep. Gould moved DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 460 DO PASS AS AMENDED.

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 21, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

February 21, 1987

Mr. Speaker: We, the committee on JUDICIARY
report HOUSE BILL NO. 566

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

Chairman

1. Title, line 8.

Following: "PARENTS;"

Insert: "ADDING CHEMICAL DEPENDENCY OR ABUSE BY ONE OF THE
PARENTS TO THE RELEVANT FACTORS THE COURT MUST CONSIDER;"

2. Page 2, line 2.

Strike: "and"

3. Page 2, line 4.

Following: "child"

Insert: "; and

(7) chemical dependency, as defined in 53-24-103, or
chemical abuse on the part of either parent"

4. Page 2, line 19.

Strike: "A"

Insert: "However, a"

5. Page 2, line 20.

Strike: "or threatened to physically abuse"

ANB566a/JM/JM2

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AVAILABLE

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0491	3/02	3/26		CONCUR		3/26
SPAETH, GARY			AMEND CONSTITUTION TO ALLOW RESIDENCY OF LOWER COURT JUDGES BE SET BY LAW			
HB0495	3/02	3/16		CONCUR AS AMENDED		3/21
CORNE, DICK			EXPAND COVERAGE OF OFFENSE OF CUSTODIAL INTERFERENCE			
HB0501	2/21	3/26		CONCUR AS AMENDED		3/26
CODY, DOROTHY			INTERPLEADER IN SMALL CLAIMS COURT PROCEDURE			
HB0503	2/21	3/24		CONCUR AS AMENDED		3/26
BRADLEY, DOROTHY			EXTEND LANDOWNER IMMUNITY TO TOURING OF CULTURAL AND HISTORICAL SITES			
HB0504	3/09			CONCUR AS AMENDED		3/21
KADAS, MIKE			LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION			
HB0509	2/21	3/09		CONCUR AS AMENDED		3/21
SCHYE, TED			PROHIBIT THE OPERATION OF AN AIRCRAFT WHILE UNDER INFLUENCE OF ALCOHOL/DRUGS			
HB0546	3/02	3/09		CONCUR AS AMENDED		3/13
FRITZ, HARRY			MODIFY ABSOLUTE LIABILITY DEFINITION -- APPLY TO DUI OFFENSES			
HB0554	2/16	3/23		CONCUR AS AMENDED		3/26
DAILY, FRITZ			PAY CRIME VICTIMS THE PERPETRATOR'S PROCEEDS OF THE CRIME			
HB0558	2/21	3/09		CONCUR		3/11
GOULD, BUDD			REVISE AND CLARIFY RESPONSIBILITY FOR CRIME COMMITTED WHILE INTOXICATED			
HB0564	3/02	3/26		CONCUR AS AMENDED		3/26
WILLIAMS, MEL			REVISE CITY COURT JURISDICTION AND PROCEDURE			
HB0566	3/02	3/16		CONCUR AS AMENDED		3/17

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 16, 1987

The forty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 16, 1987, by the Chairman, Joe Mazurek, in Room 402 of the state Capitol.

ROLL CALL: All members were present with the exception of Senator Pinsoneault who was excused.

CONSIDERATION OF HOUSE BILLS 283 and 284: Representative Paula Darko, House District 2, introduced House Bills 283 and 284, which are attached as Exhibit 1 and Exhibit 2.

PROPOSERS: John McGray, Montana Child Support Council, explained how the council runs in the state. He said the only remedy for visitation problems in Montana is the parties have to appear in court and prove something happened. He said many fathers who have visitation problems don't know about this one remedy and become frustrated and decide not to pay child support to get even. He felt HB 283 and HB 284 will help protect the father's rights. He said HB 283 protects the child's right to know both parents. He gave a California law example that showed how tough states are getting with family law. He said the moving of a child upsets a child's schedule with the visiting parent. He said a move to another state might cause the loss of visitation rights because of different state laws. He stated HB 283 will help the visiting parent keep his rights by having a hearing. He explained HB 284 states interfering with the child can be a crime. He proposed amendments for HB 284 because several people were concerned about the visiting parent coming for a visit and being drunk. (Exhibit 3)

John Hollow, attorney in Helena in custody law, gave the committee a Parent/Child Sharing Guideline. (Exhibit 4) He said HB 283 fails to address a situation of a young child that is bonded to one parent. He said children become enraged because the bonding has been broken. He

CONSIDERATION OF HOUSE BILL 495: Representative Dick Corne', House District 77, introduced HB 495. (Exhibit 6) He also distributed copies of amendments to House Bill 495. (Exhibit 6 A)

PROPOSERS: There were no proposers.

OPPOSERS: There were no opposers.

DISCUSSION OF HOUSE BILL 495: Senator Blaylock asked if the state really needed this bill because of House Bills 283 and 284. Rep. Corne' said section (a) of the bill is not covered in the other two bills.

Senator Halligan inquired why it has to be expanded to the District Court instead of the Justice of the Peace Court. The committee said they would talk about this in executive action.

Representative Corne' closed the hearing on HB 495.

CONSIDERATION OF HOUSE BILL 566: Representative Nancy Keenan, House District 66, introduced the bill. (Exhibit 7)

PROPOSERS: Caryl Wickes Borchers, Montana Coalition Against Domestic Violence, supported the bill. (Exhibit 8)

Written testimony in support of HB 566, is attached.
(Exhibit 8A, 8B, 8C, and 8D)

Janet O'Rantia read testimony for her daughter, which is signed "A Concerned Mother". (Exhibit 9)

Jennifer Payne, Great Falls Mercy Home, read testimony for Anna Marie Kelly. (Exhibit 10)

Barbara Archer, representing herself, supports HB 566.
(Exhibit 11)

Ann G. Eifert, Dillon, Montana, represented by Ms. Archer, supported HB 566. (Exhibit 12)

Lenore F. Taliaferro, Family Abuse Specialist, Friendship Center of Helena, rose in support of HB 566. (Exhibit 13)

Pamela Shore, Woman's Law Caucus, supported the bill. She explained there are five ways to abuse: 1) verbal; 2) physical; 3) sexual abuse; 4) economic; and 5) socialization.

Boyce Fowler, SRS, supported House Bill 566.

Tom Schneider, representing himself, testified in favor of the bill.

OPPONENTS: There were no opponents.

DISCUSSION ON HOUSE BILL 566: Senator Halligan asked why psychological abuse wasn't included. Representative Keenan said mental abuse is harder to identify than physical abuse.

Senator Mazurek asked why physical abuse was removed on page 3, but not on page 2 of the bill. Pam Shore said it has to do with the burden of proof.

Representative Keenan closed. She gave the committee a handout on the bill. (Exhibit 14)

CONSIDERATION OF HOUSE BILL 679: Representative Nancy Keenan, House District 66, Bozeman, introduced HB 679. (Exhibit 15) Rep. Keenan explained the fine money is not being used properly; however, used for shelters, the money would be used properly.

PROPONENTS: Caryl Wickes Borchers, representing Montana Coalition Against Domestic Violence, supported HB 679. (Exhibit 16) Ms. Borchers also presented written testimony for Carol Bullard (Exhibit 16A) and presented a handout for a Domestic Violence Seminar to be held in Glendive, Montana on April 3, 1986. (Exhibit 16B)

Julie Ferguson, representing herself, supports the bill. (Exhibit 17)

Roxanne (no last name because of confidentiality) read her testimony. (Exhibit 18)

Boyce Fowler, Domestic Violence Program Manager, testified in support of the bill. (Exhibit 19)

Delores V. Harron, Great Falls Mercy Home, read testimony of Lucille Pope (Exhibit 20), and Deborah Kimmet. (Exhibit 20A)

Jim Haynes, Montana Magistrates Office, supported HB 679, and presented a proposed amendment to the bill. (Exhibit 21)

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ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 16

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>		X	
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

SUMMARY OF HB566 (KEENAN)

(Prepared by Senate Judiciary Committee staff)

HB566 amends the laws relating to award of child custody in separation and divorce cases. Under current law, custody must be determined in accordance with the best interest of the child. When the court makes an award of custody, it must consider the following factors: 1) wishes of the parents; 2) wishes of the child; 3) interaction and interrelationship of child with parents and other family members; 4) child's adjustment to home, school, and community; and 5) the mental and physical health of all individuals involved. This bill would add the two following factors to that list: 6) physical abuse or threat of physical abuse by one parent against the other parent or the child; and 7) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

In addition, this bill amends the law relating to award of joint custody to provide that if the court finds that one parent physically abused the other parent, that is sufficient basis for finding that joint custody is not in the best interest of the child. (The House deleted "or threatened to physically abuse the other parent" from the bill.)

COMMENTS: None.

DATE March 16, 1987BILL NO. H.B. 566

February 6, 1987

Capitol Station
Helena, Montana 59601

Dear Legislators,

I am here today to ask your Support for HOUSE BILL 566 (CHILD ABUSE OR SPOUSE ABUSE TO PRECLUDE JOINT CUSTODY), as a member of the MONTANA COALITION AGAINST DOMESTIC VIOLENCE.

I have worked with over 5,000 Battered Women and Children since I started the 1st Shelter in Montana in May/1977 (one of 30 Shelters in the United States addressing the Problem of Spouse Abuse at that time).

In 1986, The Mercy Home Staff and I worked with 538 Women and Children 'in' the Shelter and an additional 1,381 Family Units in Outreach. Due to our EDUCATIONAL efforts we are doing much more Prevention Work. We use an in-depth 4 Page 'Confidential Intake' form to get the Case Histories of the Types of Abuse/Family Backgrounds/Types of Parenting Skills & Nurturing each Spouse Uses/ and the affects on the Children. We also have the Women write Journals--documenting the History of the Abuse to her/ Abuse to the Children/ or what the Children witnessed or heard. They also document how the Children are learning this 'ROLE-MODELED BEHAVIOUR' as NORMAL BEHAVIOUR.

I have testified in 8 different District Courts (as an EXPERT WITNESS) on the Dynamics of Abuse; Cycle Theory; Learned Helplessness; Intergenerational Cycle of Family Violence; & Affects on the Children. I have also ADVOCATED with many other VICTIMS and have witnessed how the ABUSIVE PARENT will try to Regain CONTROL over the other Spouse by using the Child or Children as "PAWNS" to get his Spouse back in the Relationship. Some of the Next Personal Testimony here today will exemplify this Dynamic of using the Children as 'PAWNS'.

JOINT CUSTODY does not force AN ABUSIVE PARENT to become a 'Responsible Parent' (just as there exists no means of forcing a Parent to exercise their right of visitation under a sole custody order).

COURT IMPOSED JOINT CUSTODY increases the Rights but not the Responsibilities of the Parent who does not Primarily Care for the Child. Further, it endangers Battered Women by decreasing their ability to Protect themselves and their Children from further Violence, and endangers all of them by aggravating their already-strained Economic Circumstances due to the Abusive Relationship.

COURT IMPOSED JOINT CUSTODY gives the ABUSIVE PARENT a guaranteed continuing and frequent access to his Victim, while the Battered Woman lives under the ever-present Threat of Losing Custody altogether if she appears to "OPPOSE" or "INTERFERE" with the Batterer's Role.

The 1985 LEGISLATURE made DOMESTIC ABUSE A CRIMINAL ACT in the STATE OF MONTANA. I hope that the 1987 LEGISLATURE will follow up with the JUDGES & COURTS to say that if there is: 'Evidence of Abuse to either Spouse or Child-- that under the 'BEST INTEREST OF THE CHILD STANDARD'--it prohibits the Presumption of Joint Custody.

Sincerely yours,

Caryl Wickes Borchers

Caryl Wickes Borchers

Executive Director, Great Falls Mercy Home
Chair, Montana State Task Force on Spouse Abuse (1978-1982)
Rep., Montana Coalition Against Domestic Violence (1982-87)

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February 19, 1987

Dear Legislators:

I am writing in regards to spouse abuse. I was married in July 1984 and the abuse started approximately 6 months later. At first it was just pushing and shoving. Later on it was kicking and hitting in areas that people could not see, such as my head, legs, buttocks, etc. The abuse not only affected me, but it also affected my children.

My daughter was a nervous wreck when my husband was around for she never knew what to do. He was always on her case about something and she had continual stomach problems. My son also was a nervous child and would not go to anyone but me. I left my husband 2½ years ago and since that time, both my daughter and son have become different people. They are more trusting, loving and happy children.

My husband came from a good "christian" family as his father was a Reverend. This good "christian" background gave my husband such a temper that he has lost 3 jobs and his family because of it. This type of behavior is hard to live with as you never know if he will be kind and gentle to you or beat you to a pulp because you did not talk to him the way he wanted. I don't feel any person who is this unpredictable and outrageous has the right to have custody of their children for fear they may end up six feet under.

I lived on pins and needles most of my marriage in fear that I would always do or say something to set my husband into a rage. I have found through support groups that people like Tim do not need anything to set them into a rage.

Thank you for listening to my story and I ask your help in this matter.

Sincerely,

Kim

February 8, 1987

EXHIBIT NO. 8BDATE March 16, 1987BILL NO. HB 566

Dear Legislators,

I am writing in support of Bill 566, Child Abuse or Spouse Abuse to Preclude Joint Custody. Working at a battered women's shelter, I find this bill essential not only to the women I serve, but as society's response to their responsibility to child welfare.

I would like to tell you the story of Dawn. Dawn came to the shelter in April of 1980, her husband (Tom) was extremely abusive and controlling. By 1982 Dawn had gotten a divorce and started a new life for her and her children in Idaho. She had custody, he had summertime visitation. Tom showed up drunk to take his kids to Great Falls for the summer. Dawn had no legal right to stop him. He took the kids and never returned them. Dawn's economic situation did not make it feasible for her to come to Montana until a year later.

While she was in Great Falls, trying to retrieve her children, he had control again. The kids were used as pawns, they were allowed no contact with their mother. Dawn was threatened and harassed, not to mention the psychological effects on the children.

At this time, Tom filed for joint custody. Dawn's fears of losing her kids were immense. She had neither the money nor the time to oppose him in court. By spending an extensive time in Great Falls, she was putting her life in Idaho in jeopardy. After 51 days, Dawn got her children back. They were confused and withdrawn for some time.

This is a story of manipulation. Child care is an issue of competency. Producing children does not presume capability. In a custody case, spouse abuse (need I mention child abuse) is an essential determining element. To summarize- AN ABUSIVE HUSBAND DOES NOT MAKE A SAFE FATHER!

Sincerely,

Patricia Haray

FERGUS COUNTY

DEPARTMENT OF PUBLIC WELFARE

308 Bank Electric Building
Lewistown, Montana 59457
(406) 538-7468



SENATE JUDICIARY

EXHIBIT NO. 8C

DATE March 16, 1987

BILL NO. HB 566

February 11, 1987

Dear Legislators:

I am writing out of concern on the issue of joint custody and the bill 566. I feel strongly that you need to consider alternatives to joint custody in cases where abuse is present. Custody issues should be granted with the child's or children's best interest in mind.

I am a social worker presently working in Child Protective Services and worked formerly as co-ordinator of a Spouse Abuse program. In most of our cases, the children were used as tools to hurt the other parent. In cases where spouse abuse was present, joint custody forced the abused parent into seeing the abusive parent when visitation with the children would take place. National statistics show 75% of spouse abuse occurs after divorce.

I believe it is also important to understand the effect on children when they see one parent abusing the other, and in essence, that is abusive in itself. Children have become a part of the vicious cycle of abuse. 95% of the abusers, (be it spouse abuse or child abuse) were either victims of abuse themselves or saw violence happen in their homes. Therefore, we know that violence is a learned behavior. A child who is a victim of abuse by a parent should not be forced into an unprotected visitation.

I think as adults, we owe it to our children to protect them, both physically and emotionally. It is time for us to set some legislation to help with this protection.

Sincerely,

Maggie Moffatt
Social Worker II

MM:1z



TRIBUNE FEB. 3, 1987

Man accused of killing ex-wife

BUTTE (AP) — A man accused of the fatal shooting of his former wife in Spokane, Wash., over the weekend waived extradition before a Montana judge Monday and was returned to Spokane to face a murder charge.

Steven Volstad, 32, appeared before District Judge Mark Sullivan in Butte and immediately after his appearance was returned to Spokane in the custody of deputies.

Volstad was arrested near Deer Lodge Saturday afternoon after Spokane police alerted Montana authorities that Volstad was believed en route to Minnesota.

He was arrested hours after his former wife, Christine Dale, was found in a coma with wounds to her head and abdomen.

Dale, 33, died about noon Sunday at Sacred Heart Medical Center without ever regaining consciousness.

Spokane police said a friend of the ex-husband phoned them from Minneapolis to tip them that there had been a shooting.

Police said the friend said Volstad had told him he'd shot his ex-wife in a fight over custody of their two children.

SENATE JUDICIARY

EXHIBIT NO. 80

DATE March 16, 1988

BILL NO. HB 566

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TO: 1987 Montana State Legislators

RE: House Bill 566

As the law now reads joint custody is preferred in all cases. Truthfully, before I met, and consequently married the father of my child, I too, thought that this was the only way it should be. But in the last 2 years, after having been abused physically, emotionally, financially and socially by this man, I've come to realize that joint custody is not always in the best interest of the child.

My husband had abused me mentally during most of our courtship and all of our marriage. How can you explain to anyone the feelings of degradation that someone who supposedly loves you makes you feel, let alone prove it in a court of law. Those feelings are real, and they hurt just as much as the physical ones that leave bruises. Only you can't see the bruises inside a person.

During my pregnancy his mental abuse became excessive. He constantly threatened me with divorce or annulment, on one occasion he told me how fat I was and that if I didn't quit gaining weight our marriage would definately be over. I was 7 months pregnant and he was telling me I didn't need to gain 20 pounds to have an 8 pound baby. He was constantly downgrading my parents by telling me how bad they were, that they were bad parents because they didn't live in a big beautiful home. My parents had always been very kind to him and I couldn't understand why he hated them so.

During the 6th month of my pregnancy we attended his brothers wedding out of state. The day of the wedding was the first time he had hit me out of anger. He slapped me across the face and pushed me on the bed. He had hit me before, but he always laughed it off as being for fun. One night he hit me so hard on my thigh that I lost all feeling in my leg and I could barely walk for a few days. He laughed and said he had given me a "Dead Leg". He would constantly slug or pinch me on my upper arms so that I always had bruises.

In my 7th month I realized that I couldn't go on like this. At this point, he was seldom home, but when he was he screamed at me continually. He was drinking excessively and because he admitted to me his prior use of cocaine I believe that he was using it again. I was a nervous and emotional wreck, and not only did I fear for my safety but I was afraid for my unborn child. I left him in August of 1985.

Even though I left him a full 2 months before our child was born, he still continued to try to control me. He immediately went to a lawyer and Had a separation agreement drawn up. When I refused to sign it and told him that I wanted my lawyer to look at it, that I didn't want to share the same attorney, he became violent and wouldn't let me take the agreement to my lawyer. Long before I gave birth to our child he was telling me that I was not a stable mother. I was emotionally and financially unstable - I couldn't take care of myself let alone a child. He wouldn't let me come and get things that I have left at our house, in fact they are still there. Our daughter was born October of 1985.

She was only 6 days old when he served me with divorce papers. He would not help me financially at all. I returned to work four weeks after her birth, I did not have any money. Her father wouldn't even buy diapers for her. I did not receive a dime of support for my daughter until she was 3½ months old, and that came after I filed to get child support. This man did not want our child. He didn't support her at all or by her anything until he was practically forced by the courts. He refused to have his child insured. There was a time before I filed for child support that he went almost a month without seeing her and went a full 2 weeks without even calling to inquire as to her well-being. Yet this was a man who sat in court and cried buckets because I "would not let him see his beloved little girl and it broke his heart. I showed tendencies that he felt would not be beneficial to the relationship that he wished to develop with his daughter." I believe that he used her only as a pawn to get back at me. He knew how much I loved my daughter and he knew I would do anything for her.

Shortly after her birth I witnessed several incidents that made me constantly worry for her safety while she was with him.

He held her nose to see how long it would take her to figure out how to breathe through her mouth.

When picking her up he would grab her by her wrists and pull her up without supporting her head and neck. I must add that we took a class on how to care for a newborn so he could not plead innocent on this one. One of the things that they stressed was supporting the infants neck and head properly.

On several occasions I went and picked her up at his home. He had taken her bottle and filled it with Pepsi. The first time she had drunk almost the whole bottle, the 2nd time she only had ½ the bottle. She was at this time a totally breast-fed baby. On both occasions I told him not to give her Pepsi,

that the her pediatrician said that such a small infant could not stand to have so much acid in her stomach, mainly because her digestive system was so immature. His response was "What does Pepsi have that your breast milk doesn't?" On both occasions she became very ill, suffering with sever diarrhea and vomiting.

He drank very heavily at times when he had her. On one occasion after having been told to have her home by 9:30 pm he brought her home at 11:30 pm. He was so drunk he could hardly walk , yet he drove with her, placing her car seat on the floor of his truck. There were times when he would come to pick her up and he wouldn't take her bottle or blanket and when I would try to have him take them he would scream at me. During these times it was quite common for him to bring her back without a coat or her hat. She was barely 4 months old and it was below zero many of these times.

Our first hearing before the judge was in January. At this time because of my husband's constant harassment when he picked our daughter up, the judge ordered a third party. Visitation consisted of every other weekend from 8:00 am to 8:00 pm both Saturday and Sunday, with weekday visitation at my discretion. I would let him see her several days during the week because I was told by my attorney that I would look like the cooperative parent that way. Even though we had the third party he still found ways to harass me. He would call me at work and threaten to steal her, he'd send flowers with harassing cards, phone calls in the middle of the night and pizza deliveries. One morning I woke and found that my car was missing. It was found later that day and the police said that whoever took it had access to a key, because there was no visible forced entry. My husband had a key and I believe that he is the one that took it.

On February 18 of last year instead of returning our daughter to the designated third party he left a message telling me to pick her up in Sand Coulee! That particular night it was around -15°, and I had no reliable way to get out there. We had to send the Sheriff's Department to go get her.

After this experience the judge gave him more visitation-Every other week-end plus three nights a week. He also took away the third party.

At this time the harassment and threats became unreal. He threatened to kill me, to steal our daughter, quit his full time job so he wouldn't have to pay child support. She would come home without her coats, shoes, clothers, and bottles. He would pick her up and leave her with girlfriends or neighbors and then go to work or whatever. He would take her to the bars and bowling alleys if he couldn't get someone to watch her and then leave her with the people there.

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During our last court appearance concerning custody the third party was used again. Though it cut down some of the harassment, he still found ways. He followed me constantly, in other peoples vehicles, he'd call and hang up or just let the phone ring and ring at all hours, I had strangers banging on my doors at the oddest hours.

On June 22nd of last year my daughter died at the age of 8 months and 1 week. She died while with him and the cause of her death has been listed as undetermined. I thought that this would be the end, not the beginning of another nightmare.

He used our daughter as a way to get me back to try and control me, while she lived, and even now he still tries. Shortly after her death he unsuccessfully tried to have her body moved by saying that none of his wishes were met during her funeral. We quickly proved that he was lying. Lately he has been using her grave as a place to harass me. I receive great comfort from going to my child's grave. My grandparents are also buried there. And now I believe he has been desecrating her gravesite to hurt me. The first item was a poster saying that I had lied to both him and our daughter. The second was a nude photograph he had taken of me while I was undressing. The last time these items were seen by me they were in his presence.

I realize that most divorce cases do not end as mine did, my story and my daughter's story are extremes. But as extreme as they are, it should never had happened and nother little child should never be make to suffer at the hands of an abusive parent.

A Concerned Mother

January 23, 1987

Dear Legislature,

I am writing this letter to you in support of Bill # HB 566. I have a very strong and personal interest in this bill. Last May I left an abusive marriage, after three long years.

In the first violent fight we had, it ended by my ex-husband pushing me through our storm door. I was so shocked and he was so sorry afterwards, promising that he would never again treat me that way.

In a following incident he lost control and threw me into the waterbed hard enough that I knocked the frame off of the base. Again he begged me to forgive him and trust him that he would never hurt me like that in the future.

Once when I was just getting out of the shower, he exploded, we fought, then he carried me, without any clothes on, down into our unheated basement and locked me down there. The door was in the floor and he pulled the kitchen table over it. When I wouldn't stop screaming, he came back down to "shut me up." He threw me around until he finally pushed me through the wall. Later, I found out that at the time I was almost a month pregnant with our first child, Patrick.

During this same pregnancy when I was six months along he threw me into the coffee table. I ended up on the floor. I began feeling cramps and thought I was going to lose the baby. I became very upset and started to cry. He came over to me and

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sat on my stomach and began slapping me and calling me names so that I would stop crying. He finally stopped slapping me when I quit crying.

There were times that he would twist my arms around and tell me that he could break them if he wanted to.

Once when I was pregnant with our little girl, Amanda, he locked me out of our house. It was the middle of February. I walked two miles to my parents home. Then returned to get Patrick. I left him for awhile after that. I stayed with my parents and he would come and pick up Patrick to visit him. When I would ask what time to expect them back he would tell me that he'd bring him back whenever he was good and ready and he told me once that maybe he wouldn't bring him back at all. He did return Patrick, but I always worried that he would carry out his threat, because if he threatened to do something he usually did it.

I returned to the marriage thinking that our children needed a father. But the violence still continued. One night I brought Amanda, who was two months old at the time, to bed with us to nurse her. He didn't want us in his bed so he tried to throw me out of the bed. In the process of getting at me he hit Amanda instead.

Then in October of 1985, he tried to suffocate me, he even told me that "this might as well be your death-bed bitch." I think the only thing that stopped him was Amanda's crying. Later when reminded of this incident he would say that if he had really tried to kill me, I would be dead.

The last fight we had was the Friday before Mother's Day in 1986. We fought and he tried to physically throw me out of the house. I grabbed onto everything on my way out, he couldn't get me to let go of the doorway, so he laid my legs across the slushy snow on the top step.

When I got back into the house he told me that he was going to call the police on me because I was a "crazy person." I handed him the phone and told him to go ahead. But when he didn't use the phone, I did, to call my parents and I asked them to come get the children (who had been watching the entire time) and myself.

While I was waiting for them to arrive he twisted my body like a pretzel, taking my leg up over my neck and held me there. I still have a scar on my back from it scraping on something when he was holding me in that position.

When my family arrived and I went to leave, he told me that I couldn't take Patrick and Amanda with me. I knew that he would be leaving later that day and could come back then and get the children, which is what I did.

I have only told of some of our violent episodes, after I left our marriage a counselor and I figured out that we had some fifty outbursts of violence in the three years we spent together.

The day I left my husband I contacted S.A.V.E.S. (Spouse Abuse Vital Emergency Services) from my parents home. I knew that I could no longer live the way I had been living and that it was no way to raise my children. I didn't want them to think

that was a normal family life.

So I decided, with the help of the S.A.V.E.S. advocate, to press charges against my husband for the way he had treated me, after all, it is against the law for one human being to treat another human being the way that he had been treating me. I was really scared of what he would do to me after I filed the charges against him but I went ahead and did it.

I spent that weekend (Mother's Day) at the Mercy Home in Great Falls, for the safety of myself, Patrick, Amanda and my familys. On Monday, May 11, he plead not guilty to the charges of domestic abuse that had been filed against him. Right then I knew that this man was going to deny his problem of being someone who takes out his frustrations physically on someone else. I also knew that for my safety and the safety of my children I could not go back to living with this man.

On Wednesday, May 14, 1986 I filed for a Temporary Restraining Order against him and I also filed for a divorce. The restraining order was then made permanent at a hearing on the 29th of May.

Then on June 11, 1986 he plead guilty to his domestic abuse charge. Not because he himself believed he was guilty, but because his lawyer advised him that if he changed his plea he would receive a lesser sentence, then if it was proven that he was guilty. Up until the day before his sentencing, his lawyer kept asking to to drop the charges. But I believed that since I filed the charges, what sense would it make to drop thim. He received suspended jail time of ten days as his sentence.

We had our divorce hearing on October 27, 1986, as of today we are still not divorced. At that hearing the judge said that when he ruled, it probably would be for joint custody of the children. He said that the two of us should be able to cooperate and communicate with each other for the sake of the children. Evidently, what he does not seem to understand is that in an abusive situation we don't cooperate or communicate with each other. After living with this man and letting him totally dominate me, he finds it impossible to see me as a person who can have thoughts and opinions of my own. He still has the same attitude towards me as when we were living together, it's his way or else.

I understand what joint custody is and believe that in my particular case and in most abusive marriages, that it is a way for the abusive partner to keep some control over his partner, who actually wants little or absolutely no contact with the abusive ex-spouse.

When I first left my husband and was talking to the S.A.V.E.S. advocate, she told me that since I had told her of my husband's abusive behavior to the children and myself, if we went back to live with him, she would have to report it to the Child Protection Services and that I might lose my children because of the violence in our home.

I stayed away from him, but now, even after his being guilty of domestic abuse he has the right to be alone with our children during visitation and if the judge rules for joint custody he could be a very strong influence in their lives.

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Now that we are seperated, he still verbally abuses me in conversation. Whenever I speak to him on the phone he always makes remarks about me being incapable of being a good mother to our children.

For awhile I would take Patrick and Amanda to his house for visitation, but while I was there he would say cruel things to me in front of the children. So now my parents take them for their visits and now he says smart remarks to them.

We went a couple of times for counseling last summer (to try and make divorce settlement with a third party present.) Still then he couldn't stop making verbally abusive remarks, which even the counselor pointed out how he spoke to me as being in an abusive manner.

A recent Department of Justice report states that half of the abuse recorded happens after the couple has been seperated, and quite often the childrens visitations provide the abuse with the oppurtunity to get his hands on the victim again.

I would greatly appreciate that you consider voting in favor of Bill # HB566

Thank you so much for listening to my personal opinion on this issue.

Sincerely,

Anna Marie Kelly
Anna Marie Kelly

Testimony--Senate Judiciary Committee, Mar. 16, 1987, Barbara Archer

Mr. Chairman and members of the committee,

I am Barbara Archer speaking for myself in support of HB 566.

I am the child of an abusive person who systematically terrorized and intimidated his family, the neighborhood and local law enforcement officials for a number of years.

Well over 30 years later my two sisters, brother and I realize that we have been and will always be profoundly affected by the violence we experienced so long ago.

We were allowed (forced) to spend time with our father because of 1) the threat of violence if we didn't, 2) there were times when my mother could not afford to feed or clothe us (my father never paid a dime of child support; going to court produced nothing but court costs for my mother).

One small example of the lasting effects of those years will suffice. My brother, only a few years ago, revealed that my father used to pay him to fight with boys in the neighborhood and then would reward them with ice cream afterwards. My brother was 30 years of age before he realized that this was not normal (or should not be). He still suffers from nightmares related to that time. It was only when he knew that he did not want his own children to feel the same way that he was able to recognize and change his behavior. The fact that he was able to recognize it and change it is not usual. It takes a profound act of will to be something other than what you been defined as all your life.

Children should not have to be subjected to violence and abuse. These are patterns not easily broken. The effects are permanent.

I am still unable to talk about it in person.

Please support HB 566.

DATE March 16, 1987

BILL NO. HB 566

Dear Women's Lobbyist Fund representative

I would like to enter my testimony on House Bill 566.

As a mother of children who have been subjected to verbal and mental abuse and some physical abuse I would like to see this bill passed.

I believe that children should not be left in an environment that is detrimental to them and even in the case of spouse abuse, the incidents can leave some very serious and long lasting scars.

We need to consider that many of those who are abusers, either of their spouses or their children cause the cycle to be repeated because those who abuse were often abused as children.

My divorce is still in process from an abuser. I have a 9 year old son that I don't want to follow in his father's footsteps. With our courts the way they are today and with joint custody arrangements, I'm

not really sure my sole influence can completely counteract the influence from the other side.

I'm sure that many of the other women in my position would also feel quite strongly on this issue, particularly those who have been assisted in the state's domestic abuse programs.

I feel so strongly on this that I would prefer very much ~~to~~ to ever see my children in foster homes than to have them in very much contact with their father.

Sincerely,
Ann D. Eifert
2200 Lovers Leap
Dillon Mt. 59725

HOUSE BILL 566
AMENDING JOINT CUSTODY BILL SO THAT PROVISIONS CAN BE MADE
IF THE COURT FINDS SPOUSE ABUSE, CHILD ABUSE, OR CHEMICAL
DEPENDENCY BY EITHER PARENT IS NOT IN THE BEST INTEREST OF
THE CHILD. . . DISSOLUTION OF MARRIAGE ACTION.

PREPARED BY LENORE F. TALIAFERRO
FAMILY ABUSE SPECIALIST
FRIENDSHIP CENTER OF HELENA.

Taliaferro
Lenore F.
3/16/87

POSITION: SUPPORT HB566

VOTE: DO PASS

THE DOMESTIC VIOLENCE PROGRAM OF THE FRIENDSHIP CENTER SERVES APPROXIMATELY 200 VICTIMS PER YEAR. THE PROGRAM SERVES AN ADDITIONAL 500 TO 600 CHILDREN. IN CASES WHERE DISSOLUTION OF MARRIAGE ACTION IS INITIATED BY EITHER ADULT IN ORDER TO ATTEMPT TO END SPOUSE ABUSE, ALMOST ALWAYS, THE CHILDREN THEN BECOME THE "FINAL BATTLEGROUND." EVEN THOUGH THE PHYSICAL ABUSE HAS STOPPED FOR THE ADULT VICTIM, THE PSYCHOLOGICAL AND EMOTIONAL STRESS FOR THE VICTIM IS HEIGHTENED BY THE FIGHT WHICH BEGINS OVER WHO GETS THE CHILDREN. VICTIMS HAVE BEEN THREATENED THROUGHOUT THE RELATIONSHIP AND HAVE BEEN INTIMIDATED INTO BELIEVING THAT IF THEY LEAVE, THEY WILL LOSE THE CHILDREN. ALMOST ALWAYS THE VICTIMS BELIEVE THAT THEY HAVE NO RIGHTS TO THEIR CHILDREN AND THAT IF THEY LEAVE WITHOUT THEM, THEY WILL NEVER SEE THEM AGAIN. THREATS OF LOSING THE CHILDREN IS NOT ONLY DETRIMENTAL TO THE MOTHER; AND I MUST SUBMIT, THAT IN ALMOST ALL CASES, THE VICTIM IS THE MOTHER, BUT BECOMES INCREASINGLY DEBILITATING TO THE CHILDREN. CHILDREN ARE PLACED IN A MIDDLE KIND OF POSITION AS ARBITRATOR, MESSENGER, AND BECOME FEARFUL OF BEING KIDNAPPED, OR, OF HAVING TO CHOOSE WHEN THERE IS NO CORRECT CHOICE FOR THEM TO MAKE. WHEN JOINT CUSTODY IS ORDERED, AND THE PRIMARY VICTIM HAS FLED FROM THE VIOLENT SITUATION, CHILDREN CONTINUE TO BE PLACED IN AN EMOTIONALLY DESTRUCTIVE ENVIRONMENT. REMEMBER THAT WE ARE NOT SPEAKING OF NORMAL RELATIONSHIPS, NOR, OF NORMAL ACTIONS WHEN WE USE THE TERM SPOUSE ABUSE. FAMILY VIOLENCE AFFECTS ALL MEMBERS.

ONCE THE VICTIM HAS MADE THE DECISION TO END THE VIOLENCE; SEEKS HELP FOR PROBLEMS INCURRED DURING THE VIOLENT RELATIONSHIP, AND A JOINT CUSTODY ORDER IS ISSUED, THE VICTIM IS GIVEN THE "MESSAGE" THAT SHE WILL HAVE TO ACCEPT ONGOING COMMUNICATION AND DECISION-MAKING AND CONTACT WITH THE BATTERER, WHOM SHE FEARS. NOW SHE MUST DEAL WITH A SITUATION OF POTENTIAL AND REAL DANGER FOR HERSELF AND HER CHILDREN. WITH JOINT CUSTODY, THE BATTERER WILL ALWAYS KNOW WHERE SHE IS, WHEN IT MAY BE IMPERATIVE FOR HER SAFETY AND FOR THE SAFETY OF THE CHILDREN TO LEAVE ALL BEHIND AND SEEK REFUGE SOMEWHERE UNKNOWN TO THE ABUSER. ABUSE IS A DANGEROUS BUSINESS. IN ABOUT 40% OF HOMICIDE CASES, THE VICTIMS ARE MURDERED BY THEIR SPOUSES, OR THEIR FORMER

SPOUSES. CONTINUED FORCED CONTACT THROUGH JOINT CUSTODY IS A CONSTANT THREAT TO SAFETY IN MORE THAN A FEW CASES.

SPOUSE ABUSE MAY BE THE PRIMARY PROBLEM. HOWEVER, IT IS NOT UNCOMMON FOR CHILD ABUSE, SEXUAL ABUSE, AND CHEMICAL DEPENDENCY TO COEXIST, ONE WITH THE OTHER, IN SPOUSE ABUSE HOUSEHOLDS. REGARDLESS OF WHETHER OR NOT THE CHILD IS A DIRECT VICTIM OF ABUSE, VIOLENCE IN THE HOME TEACHES CHILDREN THAT VIOLENCE IS AN ACCEPTABLE WAY TO RELATE TO OTHERS. FURTHERMORE, AS CHILDREN MATURE AND WANT TO ASSERT THEIR INDEPENDENCE IN NORMAL WAYS, THE CHILD CAN THEN BECOME THE PRIMARY OBJECT OF ABUSE. AND, SO THE CIRCLE IS UNBROKEN AND THE CYCLE CONTINUES UNTIL THE CHILDREN, ONCE ABUSED, BECOME ABUSING ADULTS.

HB566 ATTEMPTS TO BREAK THE PATTERN AND END THE ONGOING CYCLE OF VIOLENCE. MUCH MORE HAS TO HAPPEN FOR THE CHILD TO GROW INTO A HEALTHY ADULT. THAT IS HARDLY A NEW INSIGHT. HOWEVER, THE SUPPORT FOR PROGRESSIVE PIECES OF LEGISLATION IS A BEGINNING MEASURE OF A PREVENTIVE NATURE. SHOULD THE ABUSER EVER WORK TO CHANGE THAT BEHAVIOR, THEN OTHER ARRANGEMENTS SHOULD CHANGE ACCORDINGLY. HOWEVER, UNTIL THAT HAPPENS, HB566 TAKES A GIANT STEP TOWARD BREAKING THE TERRIBLE CYCLE OF VIOLENCE.

HB566 IS NOT A GENDER BILL. IN NO WAY DOES IT DEFINE SEX IDENTIFICATION AS TO WHO BATTERS AND WHO IS VICTIMIZED. WHEN BATTERING IS ALLOWED TO CONTINUE WITHOUT SIGNIFICANT INTERVENTION, THEN ALL OF US MUST ACCEPT THE CONSEQUENCES AND RESPONSIBILITY FOR FUTURE PROBLEMS WITH OUR TROUBLED YOUTH, OUR DAMAGED PARENTS, AND OUR VULNERABLE ELDERLY.

VOTING TO SUPPORT PASSAGE OF HB566 IS A SIGNIFICANT POSITIVE ACTION WITH A LOUD CLEAR MESSAGE TO VICTIMS THAT THEIR LIVES OF TERROR CAN COME TO AN END, AND THAT THERE IS HELP FOR THEM AND THEIR CHILDREN. A VOTE OF "DO PASS" IS A VOTE TO INTERVENE IN THE CYCLE OF VIOLENCE. THANK YOU.

JOINT CUSTODY IS NOT IN THE BEST INTEREST OF THE CHILD IN ABUSE SITUATIONS

CONTINUING THE CHILD'S EXPOSURE TO ANTI-SOCIAL AND AMORAL BEHAVIOR IS AGAINST THE STATE'S INTEREST

CHILDREN ARE FREQUENT WITNESS TO THE ABUSIVE BEHAVIOR

ABUSIVE BEHAVIOR IS LEARNED BEHAVIOR

PRESUMPTION FOR JOINT CUSTODY LIMITS REASONED CHOICE AT THE TRIAL COURT LEVEL

LACK OF IMPULSE CONTROL AND LOW SELF ESTEEM ARE HALLMARKS OF ABUSIVE PEOPLE

DRUG OR ALCOHOL ABUSE IS FREQUENTLY PART OF AN ABUSIVE PATTERN

JOINT CUSTODY IS USED AS A BARGAINING CHIP BY ABUSIVE PARENTS TO GAIN CONCESSIONS FROM THE SPOUSE IN BOTH PROPERTY AND CUSTODY NEGOCIATIONS

THE PRESUMPTION IS IN CONFLICT WITH THE STATE'S INTEREST IN ENDING DOMESTIC ABUSE

JOINT CUSTODY EXPOSES THE ABUSED PERSON TO CONTINUING ABUSE

PIECEMEAL LITIGATION IS AN INEFFICITIVE WAY TO ELIMINATE THE PRESUMPTION OF JOINT CUSTODY IN ABUSE SITUATIONS

JOINT CUSTODY IS NOT IN THE BEST INTEREST OF CHILD IN ABUSE SITUATIONS

There is an inherent conflict in the presumption that joint custody is in the best interest of the child when there is abuse in the family. The presumption of joint custody, subordinates several other interests. The subordinated interests are: the interest of the state to minimize domestic abuse; the interest of one parent to be free from coercion of the other; and the best interests of the child.

Parties are free to use whatever leverage is available to obtain a favorable settlement. This results in the use of custody as a bargaining chip. It is against the State's interest to give this bargaining power to an abusive person. The results of a 10 year study of the effects of California's no-fault divorce law, indicate, that fewer than one man in 10 sought physical custody of the children, but one third used custody threats to gain leverage in financial bargaining. L. Weitzman, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* (1985).

Data that is available indicates that mature and committed parents who voluntarily choose joint custody often find it rewarding. It is possible for children to live in two homes and remain positively attached to two parents who no longer love or want to be married to one other. Steinman, *JOINT CUSTODY: WHAT WE KNOW, WHAT WE HAVE YET TO LEARN, AND THE JUDICIAL AND LEGISLATIVE IMPLICATIONS*, 16 U. C. D. L. Rev. 739, 743 (1984). These conclusions are a product of empirical studies of the parenting experiences of couples who were committed to the idea of joint custody and struggled scrupulously to make it work. There is no data on how successful involuntary arrangements are. Steinman noted in a survey of the data surrounding joint custody that "[w]e have no data on the outcome of joint custody for families in which parents come to joint custody (at least initially) involuntarily or as a result of pressure from the legal system." *Id.* at 749.

Among committed parents, joint custody appears to be an attractive custodial alternative. However, care should be taken as even with cooperative parents, there is a need to ensure that joint custody suits the child's best interests. There is no evidence that joint custody would be successful between uncooperative parents. In a study reporting current findings, the researchers found, "... the level of interparental conflict may be more central to the child's post-divorce adjustment than father absence and the disruption occasioned by marital dissolution per se." Derdeyn and Scott, *JOINT CUSTODY: A CRITICAL ANALYSIS AND APPRAISAL*, *AMERICAN JOURNAL OF ORTHOPSYCHIATRY* (1984). It is impossible to conclude the presumption of joint custody is for the child's best interest.

Several studies have examined whether abusive role modeling by a parent impacts the children. Their conclusions are a resounding yes. A study conducted in 1976-1980 of 306 mothers with 735 children concluded: 76% said children were present at beatings; children are both recipients and observers of violence; and 23% said children were beaten (one-half separately, and one-half in connection with mother). Pagelow, *CHILDREN IN VIOLENT FAMILIES: DIRECT AND INDIRECT VICTIMS*, *YOUNG CHILDREN AND THEIR FAMILIES*, (1982). Abusive spouses lack moral judgment and impulse control. These are indications of a violent personality that may interfere

with a good parent-child relationship. In a British survey 54 percent of the husbands of the battered women questioned had committed acts of violence against the children as well. Gaylord, WIFE BATTERING: A PRELIMINARY STUDY OF 100 CASES British Medical Journal 194 (1975).

Case law in a number of states recognizes battery in the home of the parent seeking custody is a bar to custody. Custody was denied to a father who beat the mother. Williams v. Williams, 104 Ill. App. 3d 16, 432 N.E.2d 375 (1982). Indiana court refused to exercise its UCCJA jurisdiction as there was a pending custody proceeding in a more convenient forum, where the mother had fled from alleged act of abuse of mother by father. Cline v. Cline, 433 N.E.2d 51 (1982). In Montana two mothers were denied custody as the men they now associate with have either reputations of, or have acted out violence. Schiele v. Sager, 571 P.2d 1142 (Mont. 1977) and Bier v. Sherrard, 623 P.2d 550 (Mont. 1981).

Seven states have enacted laws that recognize abuse to a spouse is harmful to the child. They cover a wide spectrum. Arizona requires the courts to consider evidence of spouse abuse as being contrary to the best interests of the child. Arizona-House Bill 2430, signed May 9, 1986. See also, Florida Statute section 61.13(2)(b)(2), Illinois Revised Statute (1979) chapter 40 paragraph 602(a)(6). Alaska requires the courts to consider whether there was violence between the parents when deciding whether or not to award joint custody. Alaska Statutes section 25.20.090(8). See also California Civil Code section 4601.5. Kentucky allows spouse abuse as a defense to abandonment of a child if parent left home because of the spouse abuse. Kentucky Revised Statutes Annotated section 403.270(2). See also Colorado Revised Statutes section 14-19-124(4).

There are no studies that conclude joint custody is always in the best interests of the child. There are studies to show the stress of joint custody is detrimental to approximately one third of the children involved. Is it sound policy to base custody awards on creating equality between parents? Or on achieving and maintaining stability for the child. From the child's point of view, the displacement secondary to joint custody may be too stressful. The conflict created by disagreeing parents is not avoided by Montana's current mandate. The child must live with the prolonged conflict and bear the stress to meet the parent's needs. As the Montana statute does not allow a judge to screen out those disagreeing parents who can not put aside their differences for the best interest of the child.

Currently the presumption of joint custody may be overcome by application of MCA 40-4-212. This is the Best Interest of Child Statute that provides several possible challenges to the presumption. However none of them is a direct statement that perpetuation of abusive behavior is against the best interests of the child. This leaves a judge free to disregard abusive behavior in custody awards. All too frequently intra-spousal abuse is not construed as impacting ability to parent. Abuse between husband and wife are not seen as harmful to the children. Though in other areas of law such behavior is a criminal offense. This legislature should address this contradiction.

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COMMITTEE ON

Judiciary

DATE

March 16th

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Debra Jones	Women's Lobbyist Fund	566 679	X	
Gill Kennedy	Friendship Center of Helena	566 679	X	
John H. Hellyer	Attorney	284	X	
Shore F. Talafeno	Friendship Center of Helena	566 679	X	
Rope Forker	PSRS	566 679	X	
Jean Hda	Child Support Advisory Council	283 284		
Wynn Roberts	Women's Lobbyist Fund	566 679		
Tom Schneider	Individual	566	X	
Carol Wickes Borchers	Mt. Coalition Against Domestic Violence	566	X	
Carol Wickes Borchers	Mt. Coalition A.D. Violence	679	X	
Janet Brantley		566	X	
Robert L. Loeber		679	X	
Robert V. Harrison	Great Falls Mercy Home	566 679	X	
Gill Kennedy	Friendship Center of Helena	283 284		
Shore F. Talafeno	" " "	283 284		
Rachel Shore	Women's Law Caucus	566	X	
Jennifer Cayne	Gr. Falls Mercy Home	566 679	X	
Miss Vaynelli	Attorney	485 283		X

X
X not
not
not

NAME: Tom Schneider DATE: 3/16/87

ADDRESS: 447 S. Park Helena

PHONE: 406 442 1848

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: 566

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Pamela Shene

DATE: 3/16/87

ADDRESS: 920 Evans Msls, MT 59801

PHONE: 721 - 1391

REPRESENTING WHOM? Woman's Law Center

APPEARING ON WHICH PROPOSAL: H B 566

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 17, 1987

The forty-fourth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 17, 1987, by the Chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present. Senator Halligan was excused, and appeared later in the meeting.

CONSIDERATION OF HOUSE BILL 141: Representative Francis Bardanouve, House District 16, introduced HB 141, which amends the statutes relating to district court filing fees and establishes a new fee of \$100 for filing a motion for substitution of a judge. He explained when a judge is disqualified in a case it causes a lot of travel time for another judge to come and fill in. He felt this bill will help the expense of traveling in Montana for judges.

PROPOSERS: Henry Loble, District Judge, testified in support of the bill. (Exhibit 1)

Tom Honzel, District Judge, supported the bill. He explained the history of the proposed amended statute, which had to do with Marcus Daily, the Copper King, not liking the district judges in Silver Bow County because they were on the payroll of his rival.

Karl Englund, Montana Trial Lawyers Assn., pointed out the combination of this bill and Rep. Pistoria's bill will cost a person \$275 instead of \$25 for filing a petition for a court trial.

OPPOSERS: There were none.

DISCUSSION ON HOUSE BILL 141: There was none.

Representative Bardanouve closed the hearing on HB 141.

25

Larry Akey, Secretary of State's Office, presented amendments to HB 504. (Exhibit 11)

Senator Mazurek thought 20 days was a little late. Mr. Akey said there is a period of 20 days before the ballot is voted on. Rep. Kadas felt the amendments put a time limit on the procedural initiatives which he didn't like. The committee WAITED ON ACTION.

ACTION ON HOUSE BILL 805: Senator Halligan said people are going to drive, no matter what you tell them. Senator Blaylock moved to TABLE the bill. The motion CARRIED with Senator Bishop voting no.

ACTION ON HOUSE BILL 277: Senator Halligan moved the Connelly amendments. Senator Mazurek stated it might be hard to get this through with a conference committee. The motion CARRIED. Senator Blaylock mentioned on page 3, lines 2-3, the word "seized pursuant" doesn't really need to be in there. Larry Majerus said that was fine because seized is not used very often. Senator Halligan moved the amendment to strike "seized pursuant" from page 3, lines 2-3. The motion carried.

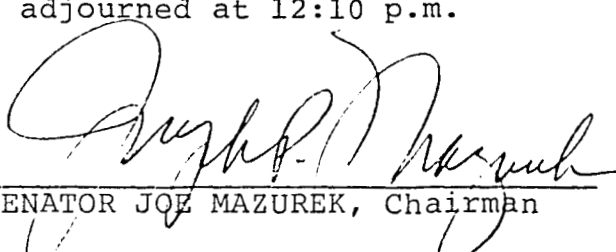
Senator Halligan moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED with Senator Beck voting no.

ACTION ON HOUSE JOINT RESOLUTION 21: Senator Mazurek did not like the idea that the first judge pick the second judge, because if the first one is a bad judge, then he might pick a second judge who is not very good. He did say this probably wouldn't be used that often.

Senator Pinsoneault moved the resolution BE CONCURRED IN. The motion CARRIED. (See roll call sheet)

ACTION ON HOUSE BILL 566: Senator Halligan moved an amendment to HB 566. (See Standing Committee Report) The motion carried. Senator Brown moved HB 566 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ADJOURNMENT: The committee adjourned at 12:10 p.m.


SENATOR JOE MAZUREK, Chairman

SENATE

March 17 19 87

PRESIDENT

your committee on.....SENATE JUDICIARY.....

under consideration.....HOUSE BILL.....~~HR~~.....No. 566.....

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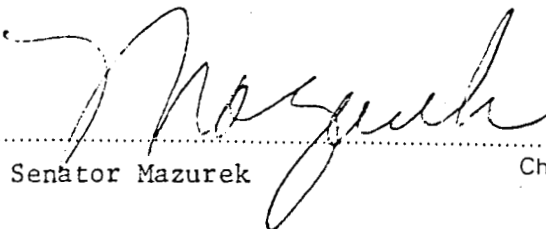
Child or spouse abuse to preclude joint custody.
Keenan (Brown)

report as follows: That.....HOUSE BILL 566 No.....

be amended as follows:

1. Page 1, line 20.
Following: "including"
Insert: ", but not limited to"

AND AS AMENDED
BE CONCURRED IN


Senator Mazurek

Chairman.

3-17-87
4:12

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 17

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

HOUSE BILL NO. 566

INTRODUCED BY KEENAN, MILES, MENAHAN, BULGER,

DARKO, RANEY, NISBET, CODY, SCHYE, LORY,

REGAN, ECK, JACOBSON, VAN VALKENBURG, B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT AN AWARD OF JOINT CUSTODY IN A SEPARATION OR DISSOLUTION OF MARRIAGE PROCEEDING IS NOT IN THE BEST INTEREST OF THE CHILD IF THERE IS A FINDING BY THE COURT OF SPOUSE ABUSE OR CHILD ABUSE BY ONE OF THE PARENTS; TO ADD CHEMICAL DEPENDENCY OR ABUSE BY ONE OF THE PARENTS TO THE RELEVANT FACTORS THE COURT MUST CONSIDER; AND AMENDING SECTIONS 40-4-212 AND 40-4-224, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-212, MCA, is amended to read:

"40-4-212. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including, BUT NOT LIMITED TO:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other

person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved; and

(6) physical abuse or threat of physical abuse by one parent against the other parent or the child; AND

(7) CHEMICAL DEPENDENCY, AS DEFINED IN 53-24-103, OR CHEMICAL ABUSE ON THE PART OF EITHER PARENT."

Section 2. Section 40-4-224, MCA, is amended to read:

"40-4-224. Joint custody -- modification -- consultation with professionals. (1) Upon application of either parent or both parents for joint custody, the court shall presume joint custody is in the best interests interest of a minor child unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interests interest of the minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody. Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interests interest of a child, nor is a finding that the parents are hostile to each other. A HOWEVER, A finding that one parent

1 physically abused or--threatened--to--physically--abuse the
2 other parent or the child is a sufficient basis for finding
3 that joint custody is not in the best interest of the child.

4 (2) For the purposes of this section, "joint custody"
5 means an order awarding custody of the minor child to both
6 parents and providing that the physical custody and
7 residency of the child shall be allotted between the parents
8 in such a way as to assure the child frequent and continuing
9 contact with both parents. The allotment of time between
10 parties shall be as equal as possible; however, each case
11 shall be determined according to its own practicalities with
12 the best interests interest of the child as the primary
13 consideration.

14 (2) Any order for joint custody may be modified
15 pursuant to 40-4-219 to terminate the joint custody.

16 (4) The court may, at any time, direct the parties to
17 consult with appropriate professionals for the purpose of
18 assisting the parties to formulate a plan for implementation
19 of the custody order or to resolve any controversy that has
20 arisen in the implementation of a plan for custody."

-End-

